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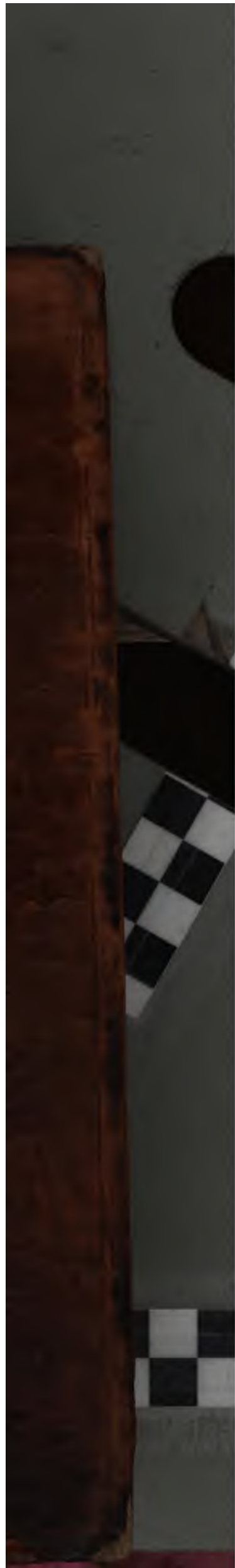
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**LANE**  
**MEDICAL**  **LIBRARY**  
**LEVI COOPER LANE FUND**

  
**The New York Academy of Medicine.**

**By**  
**The Society of the New York Hospital,**  
**March, 1898.**

*W. J. Hoadley*







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W52  
1870

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# Surrogate's Court,

WESTCHESTER COUNTY.

To JOHN W. MILLS, Surrogate of the County of Westchester :

The petition of VICTOR M. HULBERT, of the Town of White Plains, in said County, respectfully sheweth :  
That CARLTON GATES, late of the Town of Yonkers, in said County, departed this life, in the said County, on the 21st day of August, in the year one thousand eight hundred and sixty-nine, having previously, as your petitioner is informed and believes, duly made and executed his last will and testament. That your petitioner is one of the executors named in the said will ; that the said deceased was a citizen of the United States ; that he was, at or immediately previous to his death, an inhabitant of the County of Westchester ; and that his said last will and testament relates to both real and personal estate, the value of which, in the opinion of your petitioner, will not exceed the sum of one hundred and seventy-five thousand dollars.

Your petitioner further shows, that the said testator left him surviving, his father, Amos W. Gates, now residing at Londonderry, in the State of Vermont, his next of kin, and only heir at law.

That the said testator did not leave any child or

- 4 children, or the descendant of any child or children, him surviving.

That the said Amos W. Gates is of full age.

- Your petitioner further shows, that he is informed and believes that the Surrogate of the County of Westchester has jurisdiction to take the proof of the said last will and testament, and over the executors thereof, and the power of granting letters testamentary thereof, with all powers incidental thereto, and that he desires that such proof should be taken, and such letters granted, and that such  
5 further or other proceedings in the premises should be had as may be legal and proper.

- Your petitioner therefore prays that a citation may issue out of and under the seal of this Court, to be directed to the proper persons, pursuant to the statute in such case made and provided, requiring them and each of them, at such time and place as shall be in said citation mentioned, to appear and attend the probate of said last will and testament, and that such  
6 further or other proceedings in the premises should be duly had as may be requisite to the proving and recording of the said last will and testament, and the granting probate and letters testamentary thereof. And your petitioner will ever pray, &c.

Dated this twenty-seventh day of August, 1869.

V. M. HULBERT.

STATE OF NEW YORK, }  
County of Westchester, }

- I, VICTOR M. HULBERT, the petitioner named in the foregoing petition, being duly sworn, say, that I have  
7 heard the foregoing petition, to which I have subscribed my name, read, and know the contents thereof, and the same are true of my own knowledge, except as to such matters as are stated therein upon my information and belief, and as to those matters I believe it to be true.

V. M. HULBERT.

Sworn and subscribed before }  
me, this twenty-seventh day }  
of August, 1869, }

JOHN W. MILLS,

Surrogate.

At a Surrogate's Court, held in and for the 8  
County of Westchester, at the Surrogate's  
Office, in the Town of White Plains, on the  
27th day of August, in the year one thousand  
eight hundred and sixty-nine.

Present—JOHN W. MILLS, *Surrogate*.

---

IN THE MATTER OF PROVING THE  
LAST WILL AND TESTAMENT OF  
CARLTON GATES,  
*Deceased.*

---

On reading and filing the petition of VICTOR M. HUL- 9  
BERT, propounding the last will and testament of CARLTON  
GATES, late of the Town of Yonkers, in the County of  
Westchester, deceased, for probate, It is ordered, that a  
citation issue to the proper persons, pursuant to the  
prayer of the said petition, requiring them to appear in  
this Court, on the thirteenth day of September, 1869, at  
nine o'clock in the forenoon of that day, at the Surro-  
gate's Office, in the said Town of White Plains, to attend  
the probate of the said will.

JOHN W. MILLS. 10  
*Surrogate.*

---

THE PEOPLE OF THE STATE OF NEW YORK, BY THE GRACE  
OF GOD, FREE AND INDEPENDENT :

To AMOS W. GATES, *residing in Londonderry, in the State  
of Vermont, send Greeting :*

Whereas, VICTOR M. HULBERT, of the Town of White  
Plains, has lately applied to our Surrogate of the County  
of Westchester, to have a certain instrument in writing,  
bearing date the 19th day of August, 1869, purporting to 11  
dispose of both real and personal estate, duly proved as  
the last will and testament of CARLTON GATES, late of the  
Town of Yonkers, in said County, deceased, in pursuance  
of the statute in such case made and provided. You and  
each of you are cited and required personally to be and

- 12 appear before our said Surrogate, at his office in the Town of White Plains, in the said County, on the 13th day of September, 1869, at nine o'clock in the forenoon of that day, then and there to attend to the probate of said last will and testament.

Witness, JOHN W. MILLS, Surrogate of said County, at the Town of White Plains, the  
[L.S.] 27th day of August, in the year of our Lord one thousand eight hundred and sixty-nine.

JOHN W. MILLS,

- 13 *Surrogate.*

STATE OF NEW YORK, }  
County of Westchester, } ss :

WILLIAM ROMER, of said County, being duly sworn says, that he served the foregoing citation upon the following named persons, at the time and place below stated and set opposite their respective names, to wit: on AMOS W. GATES, at the Town of Yonkers, in said County, on the 27th day of August, 1869.

- 14 That such service was made by handing to and leaving with said person a copy of said citation, at the same time showing this original.

And further, that he knows the person so served to be the individual mentioned in the said citation.

WILLIAM ROMER.

Subscribed and sworn before me, this {  
13th day of September, A. D. 1869, }

DAVID VERPLANCK,

*Clerk to the Surrogate's Court.*

## SURROGATE'S COURT,

15

COUNTY OF WESTCHESTER.

IN THE MATTER OF PROVING THE  
LAST WILL AND TESTAMENT OF  
CARLTON GATES,

*Deceased.*

To the Hon. JOHN W. MILLS, Surrogate of Westchester  
County :

Please to take notice that I, AMOS W. GATES, the father  
of said deceased, and MARTHA GATES, the mother of said  
deceased, having the right to contest the said alleged  
will, hereby request that all the witnesses to such will  
shall be examined on the proof of the same.

Dated September 8th, 1869.

Yours, &c.,

AMOS W. GATES.

16

MARTHA GATES.

R. W. VAN PELT,

*Proctor for Contestants,*

## LAST WILL AND TESTAMENT

OF

CARLTON GATES,

OF THE TOWN OF YONKERS, IN THE COUNTY OF WESTCHESTER,  
AND STATE OF NEW YORK.

I, CARLTON GATES, the testator above named, being of 17  
sound and disposing mind and memory, but of feeble  
frame, and mindful of the uncertainty of life, do make,  
publish and declare the following as and for my last will  
and testament, that is to say :

*First.*—I desire and direct my executors hereinafter  
named, or such one of them as shall duly qualify, to pay  
and satisfy out my estate, all my just debts and liabilities  
and funeral and testamentary expenses, as soon as may be  
after my decease.

- 18     *Second.*—I desire and direct that immediately upon my  
 decease a careful medical inspection or examination of  
 my remains and a chemical analysis of the contents of my  
 stomach be made with a view to ascertain whether I shall  
 have been poisoned; and in the event of a discovery of  
 any evidences or indications of such poisoning, I instruct  
 and direct my said executors or such one of them as shall  
 duly qualify, to forthwith take any and all such steps as  
 shall or may be requisite for the institution and prosecu-  
 19     tion of criminal proceedings against the person or per-  
 sons whom I shall have designated as the object or ob-  
 jects of my suspicion in the premises. And I hereby au-  
 thorize and direct my said executors or executor to pay  
 and satisfy out my estate, the expenses incurred by, for  
 or in consequence of such examination and analysis; and  
 in case such examination or analysis shall disclose prob-  
 able grounds for my suspicions, then I authorize and  
 direct my said executors or executor to reserve out of my  
 estate such sum (not exceeding twenty-five thousand dol-  
 lars) as in the opinion of their or his legal adviser may be  
 20     needed to amply pay and fully satisfy any and all costs,  
 counsel fees and expenses attendant upon such aforesaid  
 criminal prosecution; said sum to be held by said execu-  
 tors or executor in trust for, and to be, so far as necessary,  
 by them or him expended in the payment and satisfaction  
 of said costs, counsel fees and expenses, and when the  
 same or any of the same or any part thereof shall or may  
 from time to time accrue, any and all surplus or excess of  
 said sum, so reserved, that shall remain in the hands of  
 my said executors or executor, after full payment and  
 21     satisfaction of said costs, counsel fees and expenses, to  
 form part of my residuary estate and to be paid over to  
 my residuary legatee hereinafter named. In case there  
 shall be at any time any disagreement or difference of  
 opinion between my said executors as to the commence-  
 ment, management or determination of the legal investiga-  
 tion or prosecution aforesaid, I desire and direct that Dr.  
 James R. Wood, one of my said executors, shall have the  
 controlling voice in the matter.

*Third.*—I give and bequeath to my friend, Dr. JAMES

R. WOOD, of New York City, all my paintings, bronzes, 22  
 antique and ornamental glass, antique silver, weapons  
 and arms, both Oriental and Mediæval, photographs, en-  
 gravings and views of the East and of Europe, earthen  
 and porcelain ware, my Circassian bracelet, composed of  
 a variety of colored stones (which latter will be found  
 probably in the possession of Rev. J. V. HULBERT, D. D.,  
 of White Plains), all pieces of carved wood, and, in short,  
 each and everything composing or forming part of my  
 "collection;" also my entire library and its black walnut 23  
 cases and furniture, as it shall stand at the time of my  
 decease.

*Fourth*.— I give and bequeath to my particular friend  
 Mrs. ADELINE E. DARLING, wife of CHARLES CHAUNCEY  
 DARLING, the sum of ten thousand dollars.

*Fifth*.— I give and bequeath to Mrs. ANNETTE MIGY  
 (widow), of the Village of Yonkers, the sum of five hun-  
 dred dollars.

*Sixth*.— I give and bequeath to my housekeeper, JENNIE 24  
 MORRIS SALT, as also to each of my two servants, ANN  
 FITZPATRICK and MAGGIE FITZPATRICK, the sum of fifty  
 dollars.

*Seventh*.— As proof that I considered my mother sound  
 in mind and capable of making a will, at the time she  
 made and executed her particular will, bearing date May  
 10th, 1865, I cite the circumstance that when I sailed for  
 Europe, on June 2d, 1866, I gave her power of attorney to  
 transact all my business for me, which power of attorney 25  
 is recorded in the office of the Register of the City and  
 County of New York. The property, real, personal, and  
 mixed, mentioned in my mother's said Will, can be none  
 other than the family residence at Yonkers, since she  
 possessed no other real estate, as she had already assigned  
 to me all her undivided interest in her city real estate,  
 and had given me a power of attorney to call in all of her  
 personal property, and invest the same in my own name

26 and for my use and benefit. This she did unsolicited by me ; and the proposition that I should take possession of the estate as my own, was frequently urged upon her at the moment of her sister's death, and while I was still in Europe, as letters in our correspondence will show, and as Mr. and Mrs. Darling can fully testify.

Therefore, having full power to testate on the family residence at Yonkers, I do hereby give and devise the same, with all and singular the premises connected therewith, to the corporation of the village of Yonkers ; and in  
 27 case the same shall be used for any literary, collegiate or scientific Institution, or an institution of a kindred nature, I desire that such institution shall bear my name in full.

*Eighth*—All the rest, residue and remainder of my entire estate, both real and personal, of whatever nature or description, and wheresoever situate, I give, devise and bequeath to my particular friend, Rev. J. V. HULBERT, D.D., of White Plains.

28

*Ninth*—My mother, having already an ample income of her own, to support her more than comfortably, and being, more over, in such feeble, physical and mental condition, as to render her incapable of taking proper care of her property, I have not thought it necessary or desirable to leave to her any portion of my estate ; and there being a total estrangement, amounting to a complete non-intercourse between the Nisbet family and myself, I have not felt it to be incumbent upon me to leave  
 29 to either of them any devise or bequest whatsoever.

*Lastly*—I hereby nominate, constitute and appoint my said friends, JAMES R. WOOD, M. D., of Irving Place, New York City, and Rev. J. V. HULBERT, D. D., of White Plains, Westchester County, New York, the *executors* of this my *Will*, hereby revoking all other or former *Wills* by me made.

IN WITNESS WHEREOF, I have hereunto set my hand

*Fifth*—I give and bequeath to Mrs. ANNETTE MIGGY 29  
(widow), of the Village of Yonkers, the sum of five hundred dollars.

*Sixth*—I give and bequeath to my housekeeper, JENNIE MORRIS SALT, as also to each of my two servants, ANN FITZPATRICK and MAGGIE FITZPATRICK, the sum of fifty dollars.

*Seventh*.—As proof that I considered my mother, sound in mind, and capable of making a will, at the time she made and executed her particular will, bearing date May 10th, 1865, I cite the circumstance that 30  
when I sailed for Europe, on June 2d, 1866, I gave her power of *attorney* to transact all my business for me, which power of *attorney* is recorded in the *office* of the *Register* of the *City* and *County* of *New York*. The property, real, personal, and mixed, mentioned in my mothers said *Will*, can be none other than the family residence at *Yonkers*, since she possessed no other real estate, as she had already assigned to me all her undivided interest in her city *real estate*, and had given me a *power* of *at-* 31  
*torney* to call in all of her personal property, and invest the same in my own name, and for my use and benefit. This she did unsolicited by me; and the proposition that I should take possession of the estate as my own, was frequently urged upon her at the moment of her sister's death, and while I was still in Europe, as letters in our correspondence will show, and as Mr. and Mrs Darling can fully testify.

Therefore, having full power to testate on the family residence at Yonkers, I do hereby give and devise the same, with all and singular the premises connected 32  
therewith, to the corporation of the village of Yonkers; and in case the same shall be used for any literary, collegiate or scientific Institution, or an institution of a kindred nature, I desire that such institution shall bear my name in full

*Eighth*.—All the rest, residue and remainder of my entire estate, both real and personal, of whatever nature or description, and wheresoever situate, I give, devise,

33 and bequeath to my particular friend, Rev. J. V. Hulbert, D. D., of White Plains.

34 *Ninth.*—My mother, having already an ample income of her own, to support her more than comfortably, and being, moreover, in such feeble, physical, and mental condition, as to render her incapable of taking proper care of her property, I have not thought it necessary or desirable, to leave to her any portion of my estate; and there being a total estrangement, amounting to a complete non-intercourse between the Nisbet family and myself, I have not felt it to be incumbent upon me to leave to either of them any devise or bequest whatsoever.

*Lastly.*—I hereby nominate, constitute, and appoint my said friends, James R. Wood, M. D., of Irving Place, New York City, and Rev. J. V. Hulbert, D.D., of White Plains, Westchester County, New York, the *executors* of this, my *will*, hereby revoking all other or former *wills* by me made.

35 IN WITNESS WHEREOF, I have hereunto set my hand, and affixed my seal, this nineteenth day of August, in the year one thousand eight hundred and sixty-nine.

[L.S.] CARLTON GATES.

36 *Signed, Sealed, Published and delivered,* by the above named Testator, CARLTON GATES, as and for his LAST WILL and TESTAMENT, to and in the presence of each of us, who at his request, and in his presence, and in the presence of each other have hereunto subscribed our respective names and residences, as subscribing witnesses thereto.

WILLIAM RADFORD,  
Yonkers, Westchester Co., N. Y.  
THOS. O. FARRINGTON,  
Yonkers, Westchester Co., N. Y.  
LEVI P. ROSE,  
Yonkers, Westchester Co., N. Y.

WILLIAM RADFORD, being sworn by the Surrogate and examined in support of said will, testified as follows : 37

*Examined by Mr. LYON:*

Q. Where do you live ?

A. Yonkers, Westchester County.

Q. Did you know Carlton Gates in lifetime ?

A. I did, sir.

Q. He was called Doctor Gates, was he—he was a physician.

A. Yes, sir.

Q. Where was he on the 19th of August last in the Town of Yonkers ? 38

A. He was.

Q. Did you see him on that day ?

A. I did ; I have no memorandum of the date, but I suppose that is the date I believe it is.

Q. Did you ever see that paper before [Handing witness a paper purporting to be the last will and testament of Doctor Carlton Gates] ?

A. Yes, sir.

Q. Who signed that paper there ? 39

A. Carlton Gates.

Q. Opposite that seal ?

A. Yes, sir.

Q. In whose presence did he sign it ?

A. Mr. Farrington was there, Mr. Rose was there, and Mr. Romer was there, besides myself.

Q. At the time he signed that paper or about that time, did he say what the paper was ?

A. I don't know that he did.

Q. What did he say as to its being his last will and testament ? 40

A. Well, upon reflection, Mr. Gates did say the question was asked him by Mr. Farrington if he understood the contents of the will ; he replied, that he did, and I afterwards immediately replied, that it had been read to him in my presence ; I had the pages all numbered and they are all there—just the number—no more and no less.

Q. Then he did state that this paper was his will ?

41 A. Yes, sir.

Q. You were a witness, and Mr. Farrington and Mr. Levi P. Rose were witnesses to the will—did he request those gentlemen to be witnesses to it?

A. He did.

Q. You stated that you mentioned to Mr. Farrington that the will had been read over to him; was that done in your presence?

A. Yes, sir.

Q. Then you were in the room before the other witnesses came in?

42 A. I was.

Q. How long had your interview been with him?

A. Say fifteen or twenty minutes.

Q. Who read the will over to him?

A. Mr. Romer.

Q. Mr. Romer was the counsel in attendance preparing a will?

A. Yes, sir.

Q. Did you know that Mr. Romer read the will over as it is there?

43 A. I looked over his shoulder at it as he read, and I looked at it afterwards, and requested Mr. Romer to number the pages there, because they might insert something, or might not; I did not know, and at my request he put those numbers on the pages.

Q. And so, clause by clause, this will was read over to him, and he declared that it was satisfactory to him?

A. Yes, sir; he had nothing to amend that I know of, except he said he knew it was his last will and testament.

44 Q. At the time he signed the will, I believe you have already testified that each of these witnesses were in the room?

A. Yes, sir.

Q. And did they sign it in his presence also, in the room at the same time?

A. Yes, sir.

*Cross-examined, by Mr. VAN PELT:*

Q. Mr. Radford, you live immediately adjoining the Gates' premises, I believe?

A. I do. 45

Q. And have resided there for many years ?

A. Yes, sir.

Q. You are well acquainted with the family ?

A. Some portion of the family.

Q. The doctor's immediate family ?

A. I never had an intimate acquaintance with Doctor Carlton Gates ; I knew the Doctor as well as I could know another, and was well acquainted with Mrs. Gates.

Q. His father ?

A. His mother ; that is all of the immediate family I believe. 46

Q. When were you first called upon to attend, for the purpose of becoming a witness to a will ?

A. The will was made on Thursday ; on Tuesday evening Mr. Romer called on me, at my house, and asked me if I would witness the will of Doctor Gates ; I objected ; I said these things sometimes brought upon us a considerable trouble, and that I preferred he would secure some other person.

Q. Was that the first notice you had of a will being about to be executed ? 47

A. Yes, sir.

Q. Tuesday evening ?

A. Yes, sir.

Q. Was the will shown you before it was executed, and before you went to the house for the purpose of becoming a subscribing witness ?

A. No, sir ; I never saw this will until I saw it in the presence of Doctor Carlton Gates.

Q. And when first did you see it in his presence ? 48

A. The day it was signed.

Q. Did you see another will that had been prepared ; and, if so, when and where ?

A. I saw another will read to him—heard it read and saw it the day before this one was executed.

Q. That was on Wednesday ?

A. That was on Wednesday.

Q. Who read the will to him ?

A. Mr. Romer.

- 49 Q. Who else was present ?  
 A. None others.  
 Q. But yourself and Mr. Romer and Doctor Gates ?  
 A. Yes, sir.  
 Q. How did that will differ from the will now before you ?

Mr. LYON : We must have that document ; it will speak for itself.

- 50 Q. I will ask you first, then, where that first will is ?  
 A. I don't know, sir.  
 Q. Where did you see it last ?  
 A. In the hands of Mr. Romer.

Mr. VAN PELT : We ask you now to produce it, or we will give parol evidence of its contents. [Paper produced by Mr. Romer].

- Q. Is that the document ?  
 51 A. Well, I have no marks upon this paper, sir, and I cannot tell.  
 Q. Examine it, if you please, sufficiently to satisfy yourself that is the paper ?  
 A. I will have to read it all through.  
 Q. Well, do so ; we will wait for you ?  
 A. [Witness examined the will]. As near as I can remember, this is the same, or one very similar ; I see one alteration made here, that was not made, to the best of my knowledge, during my presence.  
 52 Q. Will you just indicate it ?  
 A. It is that word " five," on the margin there—not of the will ; but the will, as it was read, was corrected, as he went along, as suggested by Doctor Gates ; you will see various alterations in the will there.  
 Q. Was it suggested by Doctor Gates ?  
 A. Both by Doctor Gates and Mr. Romer.  
 Q. Both by Doctor Gates and Mr. Romer ?  
 A. Yes, sir.  
 Q. And the alterations made were made in pursuance of the suggestions ?

- A. Yes, sir. 53
- Q. You have no doubt that is the same paper?
- A. That is my opinion, without having any marks on them that I can identify by; the contents appear the same, and I have no doubt that is the same will.
- Q. And the alteration from five to one hundred dollars is the alteration in the bequest to Mrs. Annette Miggy?
- A. Yes, sir.
- Q. Is this the only will that was prepared before the one that was executed?
- A. I don't know that. 54
- Q. To your knowledge?
- A. To my knowledge.
- Q. Why was this will not executed on that day it was read to you?
- A. Because of the alterations which had been made.
- Q. It had to be written over again?
- A. Written over again; yes.
- Q. But you attended on that day for the purpose of being a subscribing witness, and, owing to these alterations, the execution of the will was deferred until another copy could be made? 55

Mr. LYON: Ask him that question—he has not said so.

- Q. Well, is it so?
- A. I think not.
- Q. What did you attend for on the first day?
- A. If I remember right, Mr. Romer requested me to go over there and hear that read, and see whether he approved it or not; I don't think I went there for the purpose of witnessing a will on that day. 56
- Q. And he did approve it after the alterations were made?
- A. After the alterations; yes, sir.
- Q. What condition was he in as to his physical health at that time?
- A. Well, I am not a physician.
- Q. Well, describe?
- A. I am not an expert, and I do not propose to give

57 an opinion on that subject unless compelled to by the Court.

Q. Was he very sick ?

A. Oh, yes.

Q. Was he in his bed ?

A. Yes, sir.

Q. He could not leave his bed ?

A. I think not.

Q. When this will was prepared ?

A. When that was prepared.

58 Q. When the other will was executed, or the will that was executed ; just describe, if you please, the manner in which he wrote his name ?

A. He was lying in bed, and was bolstered up by some of us there ; I did not do any part of that ; he was bolstered up by a pillow behind his back, and his feet drawn up to form, as it were, a desk ; he was so bolstered that his feet were pushed up and held up.

Q. Who held his feet up ?

59 A. Mr. Romer held his feet up while he was trying one or two pens, and after that Mr. Farrington held his feet up.

Q. How did he hold them—just describe the manner in which he —

A. Well, braced himself against the foot of the bed and put his arms across his feet.

Q. So, he was braced up behind and before at the time he wrote his name ?

A. Yes, sir.

60 Mr. LYON : Use the language of the witness.

Q. Wasn't that your language ?

A. I said bolstered—he was bolstered up behind, and his feet drawn up to put him in a position to write.

Q. He was very sick, was he not ?

A. He was.

Q. So sick that he could not sit up even without being bolstered ?

A. I think not—I think he was not strong enough to sit up—he was so weak he could not sit up by himself.

Q. Was he very much emaciated ? 61

A. Very thin.

Q. You had seen him when he was in better health ?

A. I had—very much better, I suppose.

Q. The ravages of disease were very apparent, were they not ?

A. He appeared to be a very sick man, as time proved afterwards that he was.

Q. When you were sent for on the day this will was executed, who did you find in his room ?

A. No one. 62

Q. When you first went there ?

A. Nobody.

Q. Who next came ?

A. I think, Mr. Romer accompanied me there.

Q. Who came next ?

A. Mr. Romer and I went there together.

Q. Who came next ?

A. Nobody—you mean the last day.

Q. When the will was executed ?

A. Mr. Farrington and Mr. Rose. 63

Q. Will you relate, if you please, as nearly as you can recollect it, what was said and done in the room—just tax your recollection and state to us all that was said and done ?

A. I went with Mr. Romer to the room alone, or rather in company with him, without the other subscribing witnesses, and after the usual salutations passing between us, Mr. Romer suggested to him that if he was ready he would now read the will, as prepared, in my presence ; he did read the will then, and soon after Mr. Farrington 64 and Mr. Rose were admitted to the room ; they, of course, spoke to the Doctor, and to us, and Mr. Farrington soon entered into a conversation with the Doctor ; I think he said to him—remarked that the weather was very fine—something to that purpose ; the Doctor declared that he hardly knew about the weather, at all ; that he had been so absorbed in matters and affairs connected with himself that he scarcely knew about the weather at all, or the world ; I think that was his exact language ; I don't

65 know what other conversation took place between Mr, Farrington and himself. Oh! during that conversation, Mr. Rose and myself were looking out of the window—looking at a beautiful prospect from the window, and Mr. Rose remarked, that he had made a great mistake when he had sold that property to the Doctor; that if he had kept it it would have made him comfortable in his old days, and so forth; I soon after approached the Doctor at the bed, myself, and made some remark to him; perhaps I said over what Mr. Rose had said; I think his reply was, that things had very much changed since then, and he was looking at it from a different stand-point from what he was when he sold it; I don't remember any conversation in particular besides that, except his answering Mr. Romer by saying that he was ready to sign the will, and then, as you have asked me to say—do you want me to continue now to his signing?

Q. Yes, sir; every word you can recollect, if you please?

A. I think that the proposition to bolster him up came from himself, and that some one suggested that they hold his feet up—which one I don't remember; I think Mr. Rose, or some person, asked him whether he would sign with a steel or a gold pen; finally it was determined that he should try which he could write best with; he tried a steel pen first—that is the best of my recollection—and afterwards Mr. Rose presented him with his gold pen; he tried it, and said that would answer; the paper on which he wrote his name was taken away, and the will was placed there, and he signed it with the gold pen; very little, if anything, was said afterwards, except that 68 Mr. Romer went on to put the will in an envelope, and did so; He requested some one to go get—or Mr. Romer did—some sealing wax, and Mr. Rose said, “send down to my house and get it;” who called Doctor Hulbert I don't know, but he appeared at the door, and Doctor Carlton Gates directed Mr. Hulbert to go somewhere in his library, to some drawer or bureau, and get a seal which was there, which was used, and the will was sealed up; after it was sealed up, Mr. Romer stated that he had

not dated the will ; then the seal was broken, and the 69  
date inserted by Mr. Romer, and then sealed up again  
and given to Doctor Carlton Gates.

Q. And what did he do with it ?

A. He said, after the inventory, as he called it, I think  
was made out, it would be sent, or he would send it, to  
the Safe Deposit Company in New York for safe keeping.

Q. Do you know what he did with it ?

A. I don't know.

Q. Was it left in his possession so far as you saw ?

A. Yes, sir. 70

Q. How soon after did you go away ?

A. In a very few moments.

Q. You said that Doctor Hulbert appeared at the  
door in answer to some call ?

A. Yes, sir.

Q. What door ?

A. The door of the room in which we were.

Q. Do you know who called him ?

A. I don't remember who called him.

Q. Did that door open into an adjoining room ? 71

A. It opened in the hall.

Q. In the hall ?

A. Yes, sir.

Q. Doctor Hulbert was in the house and within call ?

A. Yes, sir.

Q. Did you see any of the family of Doctor Gates in  
the house during your visit there ?

A. I did not ; on the contrary, I was informed that  
none were allowed to be there ; there was none of them  
there, and Mr. S. Gates had been requested to retire from 72  
the house.

Q. From the premises ?

A. Yes, sir.

[Mr. Lyon objected to his testifying as to information  
received from others.]

Q. Who did you receive that information from ?

A. From Doctor Hulbert, I believe.

[Mr. Lyon renewed his objection ; objection overruled ;  
exception.]

73 Q. What did Doctor Hulbert tell you on that subject?

Mr. LYON: And when?

Mr. VAN PELT: Yes, and when, every time?

A. I can't say when, I have no date; he said to me, you desire me now, shall I answer?

Q. Yes, sir; tell us what he said on that subject?

74 Q. (*By Mr. LYON*): Was it after the execution of this paper—after that occasion that Doctor Hulbert stated this to you?

A. I am almost certain that it was before and after.

Q. What did he say?

A. He said that Mr. S. Gates annoyed the Doctor very much; he had got in his mind that he would not get well if Mrs. Gates staid about the house; that she was——

75 Q. What?

A. That she was then told she would have to leave the house.

Q. Who told her?

A. This information I got from Mr. Hulbert.

Q. Who did he say told her—did he say he told her that she must not come on the premises?

A. I don't know that he used that exact language.

Q. What language did he use?

A. That she was told that she would be obliged to  
76 leave the house; I think that was his exact language, and that she had requested to remain in her room, and had said that she would not interfere at all; the idea was that she would have to leave the house entirely, or it would endanger the life of Doctor Gates.

Q. Was Doctor Carlton Gates in a condition to leave his room or bed on either of the occasions that you saw him that you have mentioned?

A. He did not try, therefore I do not know.

Q. So far as you can judge from seeing him in the bed ? 77

A. I think not.

Q. In what part of the house was Doctor Gates when you saw him, both when you were there on Tuesday and on Thursday ?

A. On Wednesday—I was not there on Tuesday.

Q. On Wednesday and Thursday—what part of the house ?

A. He was on the second-floor, in the south-east corner room, on Wednesday ; on Thursday he was on the same floor in the north-west room of the house ; he had been changed across the hall diagonally. 78

Q. And you state that Doctor Hulbert told you that Mrs. Gates wanted to be in her own room on the first floor, but that it was considered best that she should not be in the house at all ?

A. Yes, sir.

Q. After this will was executed, did you see Carlton Gates again in his lifetime ?

A. No, sir. 79

Q. Was you called upon to attend as a subscribing witness to a codicil that was prepared or intended to be prepared for him to execute after the will ?

A. Yes, sir.

Q. By whom ?

A. Mr. Romer.

Q. At what time ?

A. Mr. Romer came to my house in the afternoon and said he had the codicil prepared.

Q. What day ? 80

A. On Saturday.

Q. What day did he die ?

A. He died Saturday—this was Saturday afternoon, but he said it was too late, that the doctor was then dead.

Q. At sometime he requested you to be the subscribing witness ?

A. He requested me to go over—or rather he came to my house and said he was on his way to get me to go there.

81 Q. The codicil?

A. Yes, sir, the codicil; but on his way he had learned that he was dead, and it was then too late.

Q. Did you see the codicil?

A. No, sir.

Q. At what hour was that on Saturday that he told you that?

A. I think it was in the neighborhood of four o'clock.

Q. Had you seen Dr. Hulbert on the premises and in the house during Carlton's sickness, for a few days before  
82 he died?

A. I had seen him once or twice; he had called at my house; I had an affliction in my family, and he had made a friendly call there.

Q. Had you an opportunity of seeing that he was staying at Doctor Gates' during Carlton's sickness?

A. I looked from my place, and I noticed the Doctor on two occasions.

Q. Do you know the fact that he made his residence and his stopping place there during Carlton's sickness?

83 A. I know that he was there very much during his sickness; I know it, and I would like to explain how I know it, not altogether from seeing him on these occasions, but I knew it from himself.

Q. He was there constantly?

A. No; I don't say that.

Q. Well, what portion of his time?

A. He attended to all his other duties, likely; I don't know anything about that.

Q. Did I understand you to say that at the time Carlton wrote his name to the will, he was bolstered up in the manner you describe?  
84

A. Yes, sir.

Q. Mr. Radford, did you hear anything about this legacy to Peter Harvey Higgins of \$50, when the will was executed, or when this draft was read over?

A. When the will was read over—I now remember as you call my attention to it, that he had been left out—he was omitted I think was he not in the will which was signed?

Q. Yes?

85

A. And.

Q. What was said about him as in reference to the legacy to him of anything?

A. To the best of my recollection the Doctor said that he would see that Mr. Hulbert gave him \$50—that it was unnecessary to alter the will for that—or some one said it, either Mr. Romer or Doctor Hulbert said that.

Q. Although his name was not wrote in the will that he should have \$50?

A. Yes, sir.

86

Mr. VAN PELT offered in evidence the draft of the will produced by Mr. Romer, which was marked contestant's Exhibit "A."

*Re-direct Examination, by Mr. LYON :*

Q. Counsel asked you to state all that took place at the time the will was executed, and in response to that you omitted what you stated upon the direct-examination, as to your statement to Mr. Farrington that you had heard the will read over to him—did you mean to omit that as part of the transaction—did that take place actually?

87

A. Certainly ; I omitted that because it had been got out on the direct-examination.

Q. That is the reason you omitted it on the cross-examination, because you had already stated it?

A. Yes, sir.

Q. You said you had reason to know from Hulbert himself that he was staying there part of the time—for how long a time had that visit lasted, when did it commence?

88

A. From all I heard my mind is that it was from two to four weeks prior to his death, I have no data—I have only an indistinct recollection.

Q. That is the impression on your mind that it was from two to four weeks before that time?

A. Yes, sir.

(Signed) WILLIAM RADFORD.

89 THOMAS O. FARRINGTON, sworn and examined before the Surrogate, in support of said will, testified as follows :

*Examined by Mr. LYON :*

Q. Do you reside in Yonkers ?

A. Yes, sir.

Q. Did you know Doctor Carlton Gates ?

A. I did.

Q. Do you recollect the occasion of his executing a paper about the 19th of August last ?

90 A. I do.

Q. Did you see him sign that paper ?

A. I did.

Q. Who was present at the time he signed it ?

A. Mr. Radford, Mr. Rose, and Mr. Romer.

Q. Besides yourself ?

A. Yes, sir.

Q. At or about the time he signed that paper—what did he say it was ?

91 A. He said it was his last will and testament as to the disposition of his property.

Q. At that time was there anything else stated by any one of the witnesses as to the paper—Mr. Romer, or any body else ?

A. After the will was signed Mr. Radford stated that he had read it over to him in his presence, section by section—Mr. Romer had read it to him in his presence section by section.

Q. Did Mr. Radford in his presence make any other remark in addition to that, except the fact of his reading it over, section by section ?

92 A. Mr. Radford.

Q. Yes ?

A. I don't recollect anything special that Mr. Radford said, except that.

Q. Did the Doctor make any remark to that ?

A. Yes, sir.

Q. What did he say ?

A. With regard to the signing of this will do you mean particularly.

Q. When Mr. Radford made the remark that Mr. 93  
Romer had read the will over to him, section by section,  
in his presence, what did he say?

A. He then said "Yes," that was his will for the dis-  
position of his property.

Q. Was there anything in the way of a request to the  
witnesses to sign it?

A. Yes, sir; he said that he had sent for us to have us  
as witnesses to the signing of his will.

Q. I understood you to say that Mr. Radford and  
Levi P. Rose, were present, besides yourself, at that 94  
time?

A. Yes, sir; with Mr. Romer.

Q. Did he sign it in their presence?

A. Yes, sir.

Q. And they signed it in his presence?

A. They did.

Q. And in the presence of each other?

A. Yes, sir.

*Cross-examined, by Mr. VAN PELT:*

95

Q. When were you first called upon to be a witness to  
the will?

A. I think on Tuesday previous to the signing of the  
will on Thursday.

Q. By whom?

A. Or rather Mr. Romer inquired of me whether I  
would be engaged on Wednesday, the next day—I told  
him not, that I did not know that I had any particular  
engagement—he then said that he wanted me to witness  
the signing of a will, and I enquired if it was Doctor 96  
Gate's will, and he said it was. On Wednesday—this took  
place on Tuesday—on Wednesday he said that he would  
not be able to sign it on that day, and wanted to know if  
I would be at leisure the next day; I told him I ex-  
pected to go to the city; he replied, that he wished I  
would not, because he wanted it completed on that day,  
the next day.

Q. That was Thursday?

A. Yes, sir; the day that it was executed.

- 97 Q. The day that it was executed?  
 A. Yes, sir.  
 Q. Was there any appointment made for you on Tuesday, for you to attend?  
 A. I think he said that he would let me know.  
 Q. On Tuesday?  
 A. He told me on Tuesday that he would let me know what hour I would be required on Wednesday, but for some cause or other—I don't know whether he stated why it was not executed—but I was not called upon to go that day, but requested to be in readiness the next day.
- 98 Q. On Thursday?  
 A. Yes, sir ; on Thursday.  
 Q. Then, at that time, the will was executed?  
 A. Yes, sir.  
 Q. In what condition did you find Carlton Gates at that time?  
 A. I think he was a very sick man.  
 Q. Was he very sick?  
 99 A. He appeared to be very sick.  
 Q. Very much emaciated?  
 A. Yes, sir.  
 Q. Was he able to set up himself?  
 A. He sat up after being bolstered up in bed.  
 Q. After being bolstered up with pillows behind?  
 A. Yes, sir.  
 Q. They kept him in position?  
 A. I think they did.  
 Q. And who held his feet or his legs?  
 100 A. I did while he signed the will.  
 Q. Just describe, if you please, how you took hold of them.  
 A. Well, sir, he was bolstered up, and he raised his feet up in this way, to write on here, and then he requested me to hold ; I took hold of his ankles here, and braced myself against the bed, to make this, as it were, a desk—that was the position.  
 Q. And you held his feet there during the time he wrote his name?

A. Yes, sir ; he attempted first to hold his feet up, but they slipped, and then he requested me to hold them. 101

Q. He was not able to maintain himself in that position and write his name?

A. I suppose not, from his requesting me to keep them in that position.

Q. How much time was occupied in executing the will?

A. Well, the mere writing his name, was a very short time, but we were there, I suppose, in the room half an hour together. 102

Q. Who did you see there?

A. When I first called?

Q. Yes, sir ; and during the whole interview?

A. Well, when I went there, I found Mr. Rose upon the stoop, and we walked in the parlor, and soon Doctor Hulbert came there ; we went in the parlor and looked at the ornaments and curiosities there ; pretty soon Mr. Romer came down and asked us to go up in the room ; we went there and found Mr. Radford and Mr. Romer—oh ! Mr. Romer was with us—we found them there ; there was no other person present there ; when he got ready to sign the will his nurse was called ; he came in, and he directed him to sit the stand up by the bed, with writing materials and paper, &c., which was done, and I think he assisted in bracing him—putting him up ; that was the nurse—man nurse. 103

Q. That was Higgins?

A. I don't know his name—he was there ; he then, after he got in position—the man did not leave the room quite as soon as he expected him to—he seemed to be somewhat excited, and ordered him out of the room. 104

Q. What did he say?

A. He asked him why he did not leave the room immediately, when he had done what he was requested to do ; he said he had not got quite through ; he was putting something to rights ; I don't know what it was.

Q. Well?

A. After the will was signed he sent for the nurse again, to direct him to go to Mr. Hulbert ; he first sent

105 for the nurse, but the girl came; I think I forget which did come; one came to the door; I did not look to see who it was; he directed him or her to go to Mr. Hulbert and tell him to come there; Mr. Hulbert appeared at the door; he then gave him, I think, a bunch of keys, and told him such a key would unlock such a drawer, and there he would find a seal, which he wanted brought to him; Mr. Hulbert went, as he was directed, and brought it; I think he did not come into the room—he handed it to some one at the door.

106 Q. How far off was Mr. Hulbert when he was called for?

A. I don't know.

Q. How soon did he appear?

A. In a few minutes; I think some one said that Mr. Hulbert was in the library.

Q. How was the room situated in which Carlton was, as regards the room occupied by Mr. Hulbert?

A. It was in the front of the house—the second story; Doctor Gates occupied the north-west room and the  
107 library was in the south-west room; I think there was a small room intervening between the two; the door of this room he was in opened into the hall, then there was a small room west of that, and that went into the library.

Q. It was but a few feet distant?

A. Well, the whole width of the hall at all events.

Q. About how many feet?

A. Well, perhaps ten or fifteen feet; I did not take particular notice; through a small room, I recollect, I suppose he was there; I don't know; then the seal was fetched  
108 and handed by Doctor Hulbert to somebody; I did not see who brought the seal, but some one appeared at the door and handed the seal in; I don't think Mr. Hulbert came in.

Q. But you saw him at the door?

A. No, sir, I did not; I only supposed it was him from the fact of his sending for him; somebody came to the door and the seal was produced; I don't think I saw Mr. Hulbert, I am not sure.

Q. Then what was done?

A. The seal was used for sealing the will ; he examined it at first very carefully—Mr. Gates did—and said that was right. 109

Q. How much time was occupied in writing his name?

A. A very short time.

Q. Did he not make two efforts before he succeeded in writing it?

A. Yes, sir ; he wrote it ; he had a piece of paper and he tried two or three different pens, finally Mr. Rose produced a gold pen, he tried that, and said that would answer ; he then signed it very soon. 110

Q. What did he do with the will after it was signed and after you had signed it as witnesses?

A. I think it was handed to Mr. Romer and he put it in an envelope and sealed it ; after it was sealed Mr. Romer recollected he had not put the date in ; it was then broken open again, the date inserted, sealed up again and handed back to Mr. Gates.

Q. What did Gates do with it?

A. He had it sealed in his hand when we left the room. 111

Q. You left very soon after, I suppose?

A. Yes, sir.

Q. Were you called upon afterwards to witness a codicil?

A. Yes, sir.

Q. On what day and at what time in the day?

A. Well, I think it was on Friday ; the next day Mr. Romer said to me that the doctor wanted to make a codicil to his will, and wanted to know if I would come up and see him sign it ; I told him I would ; towards night he said that we would have to defer that until the next day, Saturday—on Saturday. 112

Q. What reason was given for deferring it?

A. I think he said that Mr. Rose was in town ; I am not sure that he could not be there ; on Saturday he asked me if I would go up ; I told him yes ; I started to go there, and near the entrance to the house I met Mr. Romer, who said that it was too late, the doctor was dead.

118 Q. And the codicil was not executed ?

A. No, sir.

Q. The earliest notice you had of this will being in preparation or contemplation was Tuesday ?

A. Yes, sir.

Q. What time in the day ?

A. Well, I declare I don't recollect.

Q. Was it in the morning or afternoon ?

A. My impression is it was about the middle of the day ; I am not sure.

114

*Re-direct examination, by Mr. LYON :*

Q. When you entered the room, did you go in with Mr. Rose ?

A. Yes, sir.

Q. Before the will was actually executed, state, if you please, all that took place between you and Doctor Gates, in the way of general conversation about the will or otherwise ?

115 A. Well, sir, I think I said to him in the first place, after passing the time of day, that I was very sorry to see him so ill, and hoped that he would soon be better ; he said that he hoped so ; that he was more comfortable than he had been the day before ; he then said—Oh ! I made some remark about the weather, I don't recollect the precise words I used, but I said to him that I thought we had had no rain for some two weeks ; his reply was that he had been so much engaged for the last few days, disposing of his property, that he took no note of passing events. I think then the preparations were made—oh,

116 no.

Q. Was anything said in regard to anything about the room by way of remark, any of the articles of vertu or curiosity ?

A. Oh, yes, sir ; I had forgotten that. I then remarked that he had a great many fine pictures and curiosities in the room below ; he replied, "yes," he "was very fond of art and art matters," and that he had a history of nearly all the prominent artists of the day in his library.

Q. Well ?

A. That was about all that transpired until after the will was signed. 117

Q. Until the time of the execution of it?

A. Until the time of the execution—do you want to know what transpired then after it.

Q. I think you have stated that already, but go right on and continue your recollection of it.

A. After the will was signed, I said to him: "Doctor Gates, as very often there is difficulty about identifying papers that are signed, is that paper you have signed, your last will and testament?" he replied that it was, and then that it was his, and then I asked him if he had read it since it was written or dictated; he said, "Yes, I have read it;" and Mr. Radford replied, that it had been read to him, section by section, in his presence, and he said, "Yes, and that is my last will and testament." 118

Q. (*By Mr. VAN PELT*): You did not see any of the family there—any of Doctor Gates family?"

A. No, sir.

Q. (*By Mr. LYON*): Mr. Radford, in his examination, referred to some conversation in regard to some omitted legacy to the nurse; you will be good enough to state what you recollect took place in regard to that? 119

A. Well, after the will was sealed, Mr. Gates said that there was one thing he omitted, and that was to leave to the nurse—calling him by name; I don't recollect his name now—to the nurse I understood it \$50; he then turned to me and said, "I have remembered all the inmates of the house except him, and I meant to give him \$50 also, but I forgot it"; but says he, "I will instruct Mr. Hulbert to pay him \$50; it is not worth while to open the will to make that change." 120

Q. By the way, you are an old resident of Yonkers?

A. Yes, sir.

Q. How long had you known Doctor Gates?

A. From childhood.

Q. Well acquainted with him all that time?

A. Well, I have not seen much of him for a number of years—he has been absent.

Q. Yes; but so far as his residence was concerned, you were well acquainted with him?

121 A. Yes ; I have seen him occasionally when at home ; he has been at home for a number of years very little.

Q. (*By Mr. VAN PELT*): When had you seen him before you witnessed the will, to have any conversation with him ?

A. Well, I don't think I had had any conversation with him—perhaps April or May ; at one time I was going to the city and met him on the boat ; I don't recollect having spoken with him since.

Q. Did you have much conversation with him then ?

122 A. Not much—passed the time of day and casual remarks.

Q. With the exception of that, you had not seen him to talk with him for years, had you ?

A. Yes, sir ; about, perhaps, three years ago, while I was an assessor, I recollect he came to see me several times, and we had conversation then.

Q. But you had not seen him in the interval between that and this meeting on the boat ?

A. Well, I had seen him occasionally.

123 Q. To have any conversation ?

A. No, sir.

Q. (*By Mr. LYON*): During the time you were an assessor, he called on you several times in regard to property and the assessment and valuation of it ?

A. Yes, sir.

Q. That was the subject of it ?

A. Yes, sir.

Q. (*By Mr. VAN PELT*): Three years ago ?

A. I rather think it was four—three or four.

124 Q. Perhaps it may have been five ?

A. No, not so long as that is.

(Signed) THOS. O. FARRINGTON.

LEVI P. ROSE, being sworn and examined before the 125  
 Surrogate in support of said will, testified as follows :

*Examined, by Mr. LYON :*

Q. Where do you reside ?

A. I reside at Yonkers.

Q. How long have you resided in Yonkers ?

A. About thirty-two years.

Q. Did you know Doctor Carlton Gates in his life ?

A. I did.

Q. Where did you live with reference to his place of 126  
 residence, Mr. Rose ?

A. Directly opposite.

Q. About the nineteenth of last month—August, do  
 you recollect the circumstance of having seen him on that  
 day, and having some business transactions with him ?

A. Yes, sir.

Q. Will you please to state what first took place be-  
 tween you—your first interview with him, on that day ;  
 state it in the order in which it took place, if there was  
 any interview before the time this will was actually 127  
 executed ?

A. On the evening of the eighteenth, Mr. Romer called  
 at my house and requested me to attend at Doctor Carl-  
 ton Gates' house as a witness to his will, and also re-  
 requested me to come up in an earlier train, if possible,  
 than I usually come home in ; I came up on the two  
 o'clock train, and my appointment with Mr. Romer was  
 at about three o'clock ; I waited until a little after three,  
 and then called on Doctor Gates, as I had some things  
 that I wanted to take to him.

Q. What were they—you can state as you go along ? 128

A. Well, I took him some grapes and woodcock, and  
 shortly after I saw him he asked me if I had an engage-  
 ment to meet at his house to attend to some business  
 that afternoon ; I told him I had an appointment with  
 Mr. Romer to that effect—he requested me to ; by the  
 way, he asked me if I was to meet Mr. Romer there or at  
 my house ; I told him Mr. Romer was to call for me at  
 my house ; he requested me to return immediately home,

129 that there might be no clashing or disappointment ; I immediately returned home and waited until Mr. Romer called for me.

Q. Now, then, go on and state, in the order in which it took place, your connection with this transaction ?

A. Do you wish the details ?

Q. Yes ; detail it as you remember it ; that is the best way ?

A. On arriving at the house, I met Mr. Romer, or, rather, Mr. Romer called for me, I should state, and  
 130 told me to come to the house in about half an hour ; it was then, I think, about four o'clock—it may have been half-past four, and at the appointed time I went to the house ; I there met Mr. Radford and Mr. Romer in the hall ; they immediately repaired to an upper room—I suppose the room occupied by Doctor Gates—and Mr. Farrington very soon came in, and he, with Mr. Hulbert and myself went into the parlor and were examining the paintings and statuary in the parlor, and remained there, probably, half an hour until we were sent for to come up  
 131 to Doctor Gates' room ; when we went in there, Mr. Farrington went in ahead of me and went to the bed and spoke to Doctor Gates—stated that he did not know that he was so ill as to be confined to his bed until the day before, I think ; that he was very sorry to find him so ill ; and some further conversation passed between them ; but I walked to the north window of his room with Mr. Radford, and stood there a few moments talking with him, while there was some conversation going on with Mr. Farrington and Doctor Gates, and in a few  
 132 moments Mr. Romer stated that the will was then prepared ready for execution ; I think Mr. Farrington was the first one to speak to Doctor Gates with reference to the paper that was then being presented to him for his signature, and asked him if he understood that to be his last will and testament, and he said it was ; he asked him if he had read it ; Mr. Radford, I think, immediately spoke and said that it had been read to him, section by section, and approved by him ; Mr. Farrington then asked him if he desired us to become the witnesses to his will, and he

said he did ; and there were several questions put to him 133  
in regard to what he would sign his name with—whether  
with a steel pen, or quill, or gold pen ; he said that it did  
not make much difference which ; I think they tried a  
steel pen, and he did not succeed very well with that ;  
and I happened to have a gold pen in my pocket, and  
gave him that to use, which he executed the will with,  
signed his name with the pen I gave him.

Q. Look at that paper and see if that is the instrument  
which he signed on that occasion ?

A. Yes, sir.

134

Q. That is the paper that he acknowledged to be his  
last will and testament ?

A. Yes, sir.

Q. And to which he requested you and these other  
gentlemen to be witnesses ?

A. Yes, sir.

Q. He signed it in your presence ?

A. Yes, sir.

Q. Who was present at the time of that signature be-  
sides yourself ?

135

A. Yes, sir.

Q. William Radford and Mr. Farrington ?

A. Oh ! Mr. Radford and Thomas A. Farrington.

Q. They signed it at the same time you did ?

A. They signed it at the same time I did.

Q. In his presence and in the presence of each other ?

A. Yes, sir.

*Cross-examined, by Mr. VAN PELT :*

Q. You had been in the habit of visiting Carlton Gates, 136  
frequently, during his last sickness, had you not ?

A. Yes, sir.

Q. How often ?

A. Nearly every day.

Q. How long did you stay with him ?

A. Well, sometimes half an hour and an hour.

Q. When you first called upon him, in what condition  
was he as to extreme sickness ?

A. Well, the first time I saw him, I think, was on the

137 11th of August ; at that time he was—this was about seven o'clock in the evening—I think he was very much excited, and I think I am justified in saying that he had been using ardent spirits pretty freely ; on the stand, at the side of his bed, there was a decanter of brandy or a bottle of brandy and a bottle of champagne, and I noticed in talking with him that his breath was very strong of liquor, and I attributed the extreme excitement that he was under to a free use of stimulating drink.

Q. Was he able to go around the room ?

138 A. Oh, no ; he was in bed.

Q. Had you seen him shortly before that in the street ?

A. I think it was perhaps three or four weeks previous to his being confined to his house by sickness that I saw him in the street.

Q. Where ?

A. Going to his house.

Q. Did you ever see him in the street when he seemed to be under the influence of liquor.

A. Never but once.

139 Q. When was that ?

A. Well, I could not give you the date ; it was during his recent visit at home.

Q. Well, about how long before he was confined to his house ?

A. Well, it was a short time, I think, before he went to Newport.

Q. Was he intoxicated ?

A. I think he was.

Q. After your first call upon him at his house, when

140 did you call again ?

A. (The witness here took a memorandum in writing from his pocket and examined it.) I called again on the 13th.

Q. Was he still in bed ?

A. Yes, sir.

Q. Did he ever go out again, or out of his room, or sit up after you first saw him ?

A. Not that I know of.

Q. And then you saw him there every day, or every other day, down to the time he died ?

A. Yes, sir.

141

Q. During your visits to the house, who did you see there ?

A. I saw Madam Migy and Miss Sault, the house-keeper, and I also saw Mr. Hulbert several times.

Q. Who did you find in attendance upon Carlton--immediate attendance upon him ?

A. A man by the name of Higgins was attending upon him as nurse.

Q. Was any one present during your interviews with him or any of them ?

142

A. The first evening that I visited him, during my visit Dr. Bowls came in ; he had been sent for ; further than that, I think there was no one.

Q. Present at any of the interviews ?

A. Present at any of the interviews.

Q. Where did you see Doctor Hulbert ?

A. Either in the hall or dining-room.

Q. On every occasion ?

A. Once or twice I saw him in the parlor.

Q. On every occasion that you visited the house ?

143

A. No, sir ; I did not see him every time I visited the house.

Q. Did you understand that he was there ?

A. Yes, sir.

Q. Continuously ?

A. Well he left the Friday or Saturday previous--the week previous to his death--and returned home, and then returned again, I think, on Monday.

Q. Well, he was there down to Friday or Saturday of the week he died ?

144

A. Yes, sir.

Q. Not the week previous ?

A. I think he left there on the Friday previous to his death--Friday morning.

Q. Doctor Carlton Gates died on the Saturday afternoon ?

A. Yes, sir.

Q. Did you see any of the family there--Doctor Gates family ?

- 145 A. I did not ; not until after his death.  
 Q. Until after he was dead ?  
 A. No, sir.  
 Q. Did you find Carlton in a state of excitement at almost every interview you had with him ?  
 A. No ; the first interview I had with him was more excited than at any other time afterwards.  
 Q. How did he show his excitement—in what way ?  
 A. I think that the liquor had been taken away from him entirely ; I think that it was only given to him as it  
 146 may have been directed by his attending physicians.  
 Q. Did he express any wish in your presence to make a will, before you was called upon to witness the will ?  
 A. No, sir.  
 Q. Or say anything about making a will ?  
 A. No, sir.  
 Q. He talked with you very freely about his condition and his affairs, did he not ?  
 A. Well, I had not much of any conversation with him in reference to his affairs.  
 147 Q. Did he continue to grow worse every day ?  
 A. Yes, sir.  
 Q. So far as you could judge ?  
 A. Yes, sir.  
 Q. Weaker ?  
 A. Yes, sir.  
 Q. What became of this will after it was executed ?  
 A. I think he took charge of it.  
 Q. When did you see it again ?  
 A. When did I see it again ?  
 148 Q. Yes ?  
 A. I have not seen it until shown to me here in Court this morning.  
 Q. After that will was executed, was you called upon to be a witness to a codicil ?  
 A. Yes, sir ; I was requested to attend as a witness to the execution of another paper.  
 Q. Where ?  
 A. I was not informed whether it was a codicil, but I supposed that it was a codicil to be executed.

- Q. Who requested you to attend ? 149
- A. Mr. Romer.
- Q. When did he first speak to you about that ?
- A. On Friday evening after the execution of the will.
- Q. When was you to attend for the purpose of having it executed ?
- A. The next day.
- Q. At what hour ?
- A. Well, as early as I could make it convenient to attend ; I made the appointment to return home on the two o'clock train. 150
- Q. Did you say anything to Mr. Romer when he asked you to attend to witness that codicil, as to the necessity for haste ?
- A. I suggested to him that anything he had to do requiring his signature should be attended to promptly ; that there should be no delay about it ; I told him I thought he was sinking very rapidly.
- Q. You thought he was dying, then ?
- A. I don't know that I did ; I don't think I did.
- Q. Did you call his attention to the ends of his fingers coloring—turning dark ? 151
- A. I am not positive that I did.
- Q. Did you observe that ?
- A. I did.
- Q. At that time ?
- A. Yes, sir ; on my visit to him on Friday evening, I discovered that his nails and to the first joint were black and he was breathing with a great deal of difficulty.
- Q. Was not that the case to some extent on Thursday afternoon ? 152
- A. I did not notice it.
- Q. Did you attend there for the purpose of having the codicil executed, or the paper you supposed to be the codicil ?
- A. I called at the house, and as I reached the house I met Miss Sault, who informed me that he was then dead, that he had died a few minutes before.
- Q. Your errand then was at that time to execute the codicil ?

153 A. No; Mr Romer was to call at my house for me that afternoon, I think at half-past three.

Q. And did not call?

A. He did not—well he called after the death—it was about four or half-past four, perhaps, when Mr. Romer called—I then informed him he was dead.

Q. Who did you find in charge of the house when you went there on Saturday evening?

A. I found Miss Sault with the nurse and servants in the house—Madam Migy had gone to the village and  
154 returned before I left.

Q. And no member of the family?

A. No, sir.

Q. Who did you find there on Friday evening?

A. Madam Migy and Miss Sault were the only persons with the nurse that I saw.

Q. No member of the family?

A. No, sir.

Q. Did you understand whether Mrs. Gates was in attendance upon her son during any portion of his last  
155 sickness, or on the premises?

Mr. LYON objected to the witness testifying to any un-  
standing—He might state what he knew about the  
matter.

Q. Well, did you know of Mrs. Gates being in at-  
tendance during any portion of the sickness?

A. I think she was in attendance in the early part of  
his sickness.

156 Q. Was she in attendance at any time to your know-  
ledge?

A. I never saw her in attendance.

Q. Did you have any conversation with Docter Hul-  
bert on the subject of her non-attendance?

A. Well, I had—general conversation with him in re-  
ference to it only, but no—

Q. What was the subject of his communication to you  
on that subject?

A. Well, he informed me that it was at the request of

Carlton that his mother had left, and was going to New York on a visit until he got better. 157

Q. Left the house?

A. She had left the house.

Q. Was Carlton in such a dangerous conditon that any one could see that he was very sick and liable to die?

A. Well, I should.

Mr. LYON: What period are you now referring to?

Mr. VAN PELT: A few days before he died. 158

Mr. LYON: Fix the attention of the witness to the point you mean—Do not let us have these general questions.

A. I should prefer to defer that matter entirely to the Physicians in attendance—on Friday when I called upon him the day previous to his death I did regard him in a very dangerous condition.

Q. Did you so regard him when he executed the will? 159

A. Well not so dangerously ill as I regarded him on Friday—I had perhaps thought that he was sicker than most of those who attended upon him, and I had remarked to my family and to some of my friends that he was a very much sicker man, I thought, than he was generally thought to be by those who were in attendance upon him or around him.

Q. How many days before he died did you make that remark?

A. Well, I should think perhaps three or four days previous to his death—it may have been five or six days previous. 160

Q. He was very weak, very much reduced when he signed this will, was he not?

A. Yes, sir.

Q. So much so that he had to be bolstered up in bed?

A. He was bolstered up with pillows to take an easy and steady position.

Q. Did Mr. Farrington hold his legs?

161 A. Part of the time—part of the time I think Mr. Romer held them.

Q. Two of them held his legs then?

A. Not at one time.

Q. Immediately after signing the will did he lie down again?

A. Yes, sir; very soon after, not immediately—he had his pillows changed and took a reclining position.

(Signed) LEVI P. ROSE.

162

ANN NISBET, being sworn and examined before the SURROGATE, in opposition to said will, testified as follows:

*Examined by Mr. VAN PELT.*

Q. You are the sister of Mrs. Gates?

A. Yes, sir.

Q. Carlton's mother?

A. Yes, sir.

163 Q. And his aunt?

A. Yes, sir.

Q. You have resided for some years in the family of Doctor Gates?

A. Yes, sir.

Q. You know Carlton, well?

A. Yes, sir.

Q. When did he return from Europe last?

A. I think it was the 11th of November.

Q. Of last November?

164 A. Yes, sir.

Q. How long did he remain at home at the house?

A. Well, he remained until he went to Newport; I left in April—no, May—the 1st of May I left Carlton.

Q. How long was he absent when he went to Newport?

A. Well, about a few days only, I believe—I cannot state the time.

Q. And then returned again?

A. Yes, sir.

Q. To his house?

A. Yes, sir.

*The SURROGATE* : About what time.

165

Q. In August ?

A. Yes ; about the 1st of August—somewhere about there ; I don't know the dates exactly—or the latter part of July.

Q. Was it just before he was taken down sick the last time ?

A. Yes, sir.

Q. He never left the house again alive ?.

A. No, sir.

166

Q. How long was he absent ?

A. I suppose—may be a few days.

Q. How long was he absent in Europe the last visit he made there ?

A. About two years and a half—somewhere about there ; but since he returned from Europe he has behaved very strange.

Q. What did you observe in Carlton's conduct and manner of language that was strange after his return from his last visit to Europe ?

167

Mr. LYON objected to the form of the question.

*The SURROGATE* : The witness had better state what took place.

*Witness* : His conduct appeared very strange ; he used to be very profane, indeed, particularly to me ; he used very profane language to me which he was never accustomed to do before.

168

Q. Had he been in the habit of using profane language before he went to Europe the last time ?

A. No, sir—not to me he never had.

Q. You noticed that peculiarity in Carlton on his return from his last visit to Europe ?

A. Yes, sir.

Q. That he began using profane language ?

A. Very profane ; yes, sir.

Q. What did you see him do ?

169 A. I saw him do various things ; one day I was sitting at the table, comfortably, myself and daughter, and Carlton and Mrs. Gates, and I don't know what seemed to start him—but something—I don't know what it was—and he just took a knife and threw it right at her.

Q. At his mother ?

A. At his mother ; I was not in the habit of seeing him do that.

Q. Was he excited at that time ?

170 A. No, sir ; not at all that I know of ; I was taking dinner there, comfortably, and all at once he took a knife—I didn't know but what he would cut her—and threw it right at her.

Q. Did he throw it with much or little force ?

A. Considerable force—I don't know ; it struck something—a glass, or something or other, and knocked it off and broke it—something or other—the decanter.

Q. Did he make any remark as to his reason for doing that ?

171 A. No, sir ; I don't think he did ; but he only just took that fancy.

Q. When was that ?

A. That was in the Winter, soon after he returned from Europe ; he must have had some difficulty—something on his mind, I think, because of his conduct.

Q. Do you recollect of his father returning home last Fall, after Carlton had returned from Europe, and what happened then ?

A. Yes, sir ; his father returned home, last Winter, one night, and I was afraid that perhaps Carlton might kill us.

172 Q. What did he say or do to his father ?

A. We were afraid he might kill his father.

Q. Tell us what he said or did ?

A. He said : “ Are you all here ? ” he asked : “ Are you all here ? meaning myself and daughter, and Mrs. Gates and the Doctor ; and I knew that Carlton was in a great rage, and I said : “ Doctor, for goodness' sake, get out of here.”

Q. Who did you address that to—to his father ?

A. To his father ; I said : “ For goodness' sake, get

out of the room, and I fairly pushed the Doctor in his own bedroom ; and Mrs. Gates was there, and she locked the door, and if he had not got out of the room Carlton would have——” 173

Mr. LYON : Never mind that.

Q. What would Carlton have done ?

A. He said that he was going to shoot him.

Q. What was discovered in the room Carlton occupied, or in the adjoining room ? 174

A. Nothing, sir.

Q. Did you see a revolver ?

A. I saw it in his pocket.

Q. Did you see the revolver in his pocket ?

A. Yes, sir.

Q. At this time, when he said that he would shoot his father ?

A. Yes, sir.

Q. Did his father see him ?

A. No, sir ; because Mrs. Gates was in the inside of the room, and she locked the door, and Doctor took the side door that opens on the piazza and went out and went off the place, and my daughter carried him his coat. 175

Q. So that he could get off the place without Carlton seeing him ?

A. Yes, sir ; if he had been there he would have killed him that night ; I secured him that night.

Q. Did you ever know him to threaten his father more than once ?

A. Yes, sir, I have ; and likewise his mother, I have had to secure her this Summer. 176

Q. So that Carlton could not get at her ?

A. Yes, sir.

Q. What did he threaten to do ?

A. He has often said—I could not tell what ; sometimes he would throw anything at her—sometimes he would take hold of her and pinch her so that she would scream—that was a constant occurrence ; she would go up in the library ; he would send for her, and he would

177 not have anybody come into the room when he had his mother there ; I often heard screeches there, but I did not dare to go in ; one time she screamed pretty hard, and I went into the room—the library—and he had hold of his mother there.

Q. How ?

A. He had hold of her by each arm and was shaking her, and I said : “ Carlton Gates, if you don’t let go your mother I will call in the police ; ” and with that he let go his mother and caught hold of me, and I believe he would  
178 have killed me if it had not been for Miss White ; she happened to come into the room suddenly ; she did not know it, and her coming in took Carlton’s attention off and he let go of me.

Q. Did he take hold of you in the same manner that he had been holding his mother ?

A. Yes, sir.

Q. Violently ?

A. Yes, sir ; and shook me so hard, Mr. Van Pelt, that I could not speak.

179 Q. Did he hurt you ?

A. Hurt me ! I had marks on my arm for weeks and weeks.

Q. Did you exhibit them to any one ?

A. I did.

Q. To whom ?

A. Mrs. Darling.

Q. How long ?

A. A few days after he pinched me I went to the city and I showed it to Mrs. Darling.

180 Q. Did his mother scream before you went to her relief ?

A. Yes sir.

Q. And that brought you ?

A. Brought me to her relief.

Q. What did you witness, at the head of the stairs, on one occasion ?

A. Well, on one occasion, his mother did not please him ; he had asked for something, and I don’t know whether she had not got it right or what, but he said to

his mother, that if she did not give it to him he would 181  
pitch her down stairs.

Q. Did he have hold of her ?

A. Yes, sir.

Q. Did she make any expression of fright or pain ?

A. No ; she knew I was there ; she screamed nothing  
more ; I expected to see her come down stairs ; I and my  
daughter stood so as to break the fall.

Q. When was that ?

A. That was just before he was taken sick in April ;  
he had a fit of sickness in April ; I attended him ; I at- 182  
tended him for two months.

Q. You attended him during that sickness in April ?

A. Yes, sir.

Q. When was it that he pinched his mother and you ?

A. Well, it was in April.

Q. After or before this time he was going to throw her  
down stairs ?

A. After.

Q. How long after ?

A. I suppose several days, because Mrs. Gates was in 183  
the habit of coming up and down ; sometimes she would  
get home one night and Carlton would take a freak and  
send her down to New York the next day ; sometimes he  
would say to her : " I will only allow you fifteen minutes  
to get ready in."

Q. Sometimes when she returned he would send her  
off again ?

A. Yes, sir.

Q. What would he say ?

A. He would say that he could not live with her. 184

Q. What did he say about shooting her if she came  
back ?

A. He said that if he should find her on the place he  
would shoot her.

Q. How often did you hear him say that he would  
shoot her.

A. Several times ; he said if he saw her on the place,  
and I begged her not to come home ; I said, Mrs. Gates,  
I am here.

185 Mr. VAN PELT: Never mind what you told her unless Carlton was by.

Q. What other acts did you see him do that were strange or unusual?

A. Well, he pinched his mother at any time—almost every day; if he was home he would get her in the library and she would screech.

Q. Did he attempt to choke her at any time?

186 A. Oh, yes; since he returned from Newport; he caught her by the throat and I supposed he would kill her; I don't know why he didn't; he held her by the throat.

Q. What did he say during these exhibitions of violence?

A. I don't know what he said after his return from Newport; you know I was not there.

Q. Well, when you were there?

A. Well, he appeared to be angry.

Q. Did he appear to be angry with his mother?

187 A. Sometimes; sometimes he would think nothing was to good for her, and in an hour perhaps, he would be entirely changed toward her, and think everything bad of her.

Q. How was his mother's treatment towards him?

A. Always very kind.

Q. Did she ever do or say anything to irritate him?

A. She never did; I never knew her in one instance to do anything to aggravate Carlton.

Q. Did she attend him at first when he was taken sick?

188 A. For the first two or three nights she attended him all the time, and then he would not have her about him, and said she must go away, and likewise in his illness, when I was attending him, he said one day to me: "I think I am poisoned"; says I: "Carlton, that cannot be, because I attend to everything you have—everything you take;" says I: "that cannot be, unless you have taken too much quinine—perhaps that has poisoned you;" he charged me; I did not know, at that time, that I was the person he suspected, but a few days afterwards he

sent for his mother, who was in New York, to come up, 189  
and he stated to his mother——

[Mr. Lyon objected, unless the witness was present  
and heard what he stated].

Q. He did tell you he was poisoned?

A. Yes, sir.

Q. Did he say by whom?

A. No, sir, he did not; he said, "I think I am poisoned," but he suspected me.

Q. You understood that you were one of the persons 190  
he suspected of having poisoned him?

A. Yes, sir.

Q. What about the grapes?

A. Oh! well the grapes were brought.

Q. Were you there at the time?

A. No, sir; I was not there, Mrs. Gates will tell you  
about the grapes.

Q. How often was his father at home when Carlton was  
there, since last November?

A. I don't think; he has been home sometime; I don't 191  
exactly remember the time he was home.

Q. Was he at home more than once or twice since that  
time?

A. I don't think he was; I went in May and the Doctor  
was there in May sometime; I don't remember the time,  
but I believe the Doctor was there in May.

Q. Was his treatment of his father the same as his  
treatment of his mother when he was there—that is in  
making threats?

A. I don't know; I didn't see him this last time; I 192  
could not say; I was not there; I left the house myself  
in April or the first of May, you know.

Q. State what occurred on a Sunday—a certain Sun-  
day when you were there, and Carlton was in the house?

A. Well, he abused me so much, shook me and pinched  
me this way that I was afraid of him; for one week I was  
afraid to go around the house.

Mr. LYON: What did he do on this Sunday—that is the  
question?

LAN

193 Mr. VAN PELT : Was his conduct violent ?

A. He said that I was thinking to exterminate him, but if I did not take care he would exterminate me—that is what he said.

Q. What did he do then ?

A. He didn't do anything to me then.

Q. Did he threaten anything ?

A. Nothing more than if I did not take care he would exterminate me.

194 Q. Did you find it necessary to lock yourself in a room to protect yourself ?

A. Yes, sir ; I have staid up in the room and kept the doors all pretty well locked ; I did this Sunday, and in fact for a week or more ; I was afraid to go near him, and if I did, I went slyly ; if I wanted to know how he was coming on, I would go to his room when others were in there, and look at him through the door.

Q. Had you always been kind to him ?

A. I had always been kind to him, and always took  
195 good care of him.

Q. Did you ever give him any provocation for ill treatment of you ?

A. No, sir ; never.

Q. When did you first observe this change in his conduct ?

A. Since his return from Europe.

Q. This last time ?

A. This last time ; he must have had some cause for it, something must have been on his mind, or something.

196 Q. On the Sunday when Miss White—do you know Miss White—

A. Yes, sir.

Q. Was there—what steps did you take for your own security ?

A. Only to go to my room and lock the door.

Q. Was you there when the inmates of the house were prepared to leave the house in consequence of fear of violence from him ?

A. Yes, sir.

Q. State what occurred then ? 197

A. We had a very good girl ; she came up one night and the next morning——

Mr. LYON : When was this ?

Q. About what month was this ?

A. It must have been in April, I suppose, for I left in May ; somewhere about there, she came up in the room, she wanted to prepare for breakfast, and he called her up.

Q. Who did ? 198

A. Carlton did, himself—and he screamed to her so violently.

Q. (*By Mr. LYON*) : Were you there ?

A. Yes, sir, I was there, and heard and know all about it ; she went up to the room and he frightened her so much——

Q. (*By Mr. LYON*) : Were you in the room with him and her ?

A. Yes, I was right at the head of the stairs ; she could not pass me without my knowing it. 199

Q. She went into the room ?

A. She went to go into the room—he told her to come in and shut the door ; she told him she would not, she was frightened.

Q. Was she a new girl ?

A. Yes, sir, she had just come there ; she said, “ I can’t ; ” she was frightened ; I believe she thought——

Mr. LYON : Never mind that.

Q. That was his bedroom that he ordered her to come into and shut the door ? 200

A. No, it was the library ; he was in the library and he wanted her to come in and shut the door, and she said she could not, and she went right down stairs.

Q. In what tone of voice did he speak to her ?

A. In a sharp, severe tone, so much so that he frightened her, and she went right down stairs, and said she would go away ; I begged her to go up again, and tried to get her to go, but she said “ Oh ! no, I can’t.”

- 201 Q. Did she leave the house immediately?  
 A. Yes, sir.  
 Q. In consequence of his conduct?  
 A. Yes, sir.  
 Q. On that same Sunday afternoon?  
 A. I don't think that was on Sunday.  
 Q. I will ask you what took place on a Sunday afternoon that was unusual?  
 A. I don't remember anything more.  
 Q. Do you remember locking the door so that he could  
 202 not get to the part of the house you were in, and opening another door so that you could get out quickly if he came?  
 A. Oh! that was down stairs; I went down stairs and locked myself up in Mrs. Gates' bedroom; I thought that if Carlton came down there that I could get out on the piazza.  
 Q. What had his conduct been just previous to that?  
 A. Well, he was so violent—he had said that he would exterminate me, and I locked myself up; I was afraid.  
 203 Q. What had Carlton's previous conduct been towards his mother, before these attacks came on him; had he been kind and affectionate to her?  
 A. Yes, he had.  
 Q. Was he devoted to her?  
 A. Oh! yes; he thought a great deal of her, only when he had these spells.  
 Q. Did he send her presents when he was in Europe?  
 A. A great many handsome presents; he gave her a very fine wardrobe—everything you could think of.  
 204 Q. When he returned from Europe this last time?  
 A. Yes, sir.  
 Q. What articles did he send her?  
 A. Several fine silk dresses and coverings, about fourteen or fifteen other dresses, a handsome velvet cloak, an Astrighan cloak, sleeves, collars and cuffs—I don't know what he didn't send her—he sent her everything that he thought would be desirable to her.  
 Q. Had he been in the habit of treating her that way before—of giving her presents?

- A. Yes, sir. 205
- Q. Do you know of his giving her a bracelet?
- A. Yes, sir, that was some years ago.
- Q. Was that called the Circassian bracelet?
- A. Yes, sir.
- Q. Was it a handsome bracelet?
- A. Yes, sir ; my daughter has frequently worn it.
- Q. Where was it sent from to his mother?
- A. I don't know whether he brought it home or sent it.
- Q. Where did he get it?
- A. I don't remember ; I suppose he got it there, in 206 Europe.
- Q. Did he get it in Europe?
- A. Yes, sir.
- Q. And either brought it or sent it home to his mother?
- A. Yes, sir.
- Q. Was it valuable?
- A. Yes, sir.
- Q. What was it worth?
- A. I don't know ; Carlton always said, in speaking of 207 it, that it was a very valuable bracelet.
- Q. Can you form any idea of its value?
- A. May be it was worth \$2,000 or \$1,000 ; I cannot say the value, but it was very valuable ; my daughter has worn it ; Mrs. Gates would lend it to Martha sometimes when she was going out to parties.
- Q. Carlton was always devoted to his mother until he returned from his last visit to Europe?
- A. Yes, sir.
- Q. And his conduct and manner towards her then 208 changed?
- A. Yes, sir.
- Q. Did that continue until the time you left the house—his violence?
- A. Yes, sir.
- Q. When did you leave?
- A. I think the 1st of May.
- Q. Tell us how you come to leave the house?
- A. The reason why—I could not stay any longer ; I was afraid to stay, and he did not want me.

- 209 Q. Did he tell you he did not want you ?  
 A. Yes, sir ; and I did not want to stay.  
 Q. You had always had a home there, and that was unusual treatment to you ?  
 A. Yes, sir ; because I had been there all my life, and my children had always been there.  
 Q. Had Carlton always been on good terms with you before ?  
 A. Yes, sir.  
 Q. When did you return to the house again ?  
 210 A. I returned on Sunday morning, I think, about eight o'clock.  
 Q. After Carlton's death ?  
 A. He was then lying dead in the house ; I was up at the Peabody House, staying up there, and Doctor Arnold was staying at the Peabody House ; and I stayed up on Friday night until eleven o'clock to know how Carlton was ; I stayed up so as to see the Doctor before he retired—and the Doctor told me that his pulse, I think, was 140.  
 211 Q. On what day was that ?  
 [Objected to.]  
 Q. After you returned to the house on Sunday morning ?  
 A. Sunday morning about eight o'clock.  
 Q. Who did you find in the house when you returned ?  
 A. I found Mr. Hulbert, Miss Sault and Mrs. Migy.  
 Q. Those persons alone ?  
 212 A. Yes, sir.  
 Q. And the two girls in the kitchen—two servants ?  
 A. Yes, sir.  
 Q. Where had Mrs. Gates been during the time she was absent from the house ?  
 A. She was staying in New York ; she came up on Saturday morning ; she was up here on Saturday morning, and would have liked to have stayed, I believe.  
 [Objected to.]

Q. Well, what was she doing ? 213

A. She was going about ; she merely came up to hear what she could hear about Carlton—to see the Doctors ; she saw Doctor Arnold about two o'clock.

Q. Do you know that she was trying to see the Doctors during this time ?

A. Yes, sir, she told me—Mrs. Gates then went back to New York.

Q. Come down to the time when you returned on Sunday morning—did Mrs. Gates return also ?

A. I think she returned on Saturday evening ; she was 214 up twice that day ; she was up in the morning, and Dr. Arnold sent her down for Dr. Wood at three o'clock.

Q. After he died ?

A. Yes, sir ; they did not tell her he was dead.

Q. When you returned to the house on Sunday morning you found Mrs. Gates there ?

A. Yes, sir.

Q. Who seemed to be in charge, or who had the charge of the house ?

A. Why Mr. Hulbert said that he had the charge of 215 it.

Q. How long did Mr. Hulbert remain in the house ?

A. He remained until the Thursday afternoon after the death, about three or four o'clock.

Q. From Sunday morning he remained day and night until Thursday ?

A. Yes, he did, between three and four o'clock.

Q. What was he engaged in doing ?

A. Well, I suppose he handled—I don't know——

Q. Where was he ?

216

A. Up in the library most of the time.

Q. Do you know what he was doing ?

A. I don't know that ; I——

Q. Did you hear any noises ?

A. No more than I heard drawers locked and unlocked.

Q. What kind of drawers ?

A. Why, drawers.

Q. Did you hear anything indicating that papers were being moved—any noises showing that papers were being destroyed or handled ?

- 217 A. Well, I think some papers have been destroyed.  
 Q. If you did not hear it you need not state it—on what day was Carlton buried?  
 A. Carlton was buried on Wednesday—two or three o'clock Wednesday.  
 Q. And Mr. Hulbert left on Thursday?  
 A. On Thursday between three and four.  
 Q. What did he do before he left in regard to locking the doors?  
 A. The doors were all locked at the time; we entered
- 218 the house; we were confined—Mrs. Gates, myself and daughter—we were confined to two rooms, to the dining-room, and likewise Mrs. Gates' bed-room; we had no privilege of any other part; every other part was locked off from us.  
 Q. By whom?  
 A. By Mr. Hulbert.  
 Q. You were not allowed access to any other part of the house except the dining-room and Mrs. Gates' bed-room?  
 A. No, sir; he said that he had a right to keep every-
- 219 thing locked; I thought it was very strange.  
 Q. What else did you see him do or hear him say while he was there in the house?  
 A. Well, I don't think he said much; he did not see Mrs. Gates; there was no use, that I saw, of his doing anything.  
 Q. Was he there at Mrs. Gates' request?  
 A. No, sir; he stayed to suit his purposes.  
 Q. He was not there at your request?  
 A. No, sir.
- 220 Q. When did Doctor Gates return?  
 A. On Wednesday morning.  
 Q. He had been absent?  
 A. He had been absent.  
 Q. Are these rooms still locked?  
 A. No, sir; we have got the keys of the parlors.  
 Q. Are the rooms left in the same condition Mr. Hulbert left them?  
 A. Yes, sir; the library has been left as he left it locked; we have not been in it.  
 Q. It has not been disturbed?

A. No, sir ; we have not had anything to do with it ; 221  
of the other rooms he gave us the keys.

Q. How often did you hear Carlton speak of his having  
been poisoned ?

A. Oh, several times.

Q. How many times are you certain of ?

A. Well, perhaps, two or three times—I don't think,  
more than two or three times.

Q. Did he mention any person that he thought had  
poisoned him ?

A. No ; he did not 222

Q. Did you hear Carlton say anything about his  
mother having stolen papers from him ?

A. Yes, sir ; and he charged me with stealing papers.

Q. Well, about the mother—did he charge her ?

A. Yes, sir ; he charged her with having stolen papers.

Q. What did he say ?

A. He said that she had taken papers out of his  
pocket.

Q. Did he say anything about sending a police officer ?

A. I don't remember whether he did or not—I could 223  
not say ; I know that he charged me with having stolen  
papers ; and he was very much excited about my steal-  
ing papers.

Q. Did he charge you personally ?

A. Yes, sir ; I told him : " Carlton, I never took a  
paper from you in my life ; I have never been in your  
drawers ;" he said that " they were not in my drawers,  
they were in my coat pocket."

Q. Did he say what they were ?

A. No, sir. 224

Q. You told him that you did not take them ?

A. I told him that nobody came into the room but  
Celia, and that she was a nice girl, and would not take  
them ; " Oh," says he, " she did not take them, you have  
taken them."

*Cross-examined, by Mr. LYON :*

Q. You say that after he returned from Europe he  
made use of profane language ?

- 225 A. Yes, sir.  
 Q. Tell me when the first occasion was that any such occurrence took place, about when it was?  
 A. I think, in April.  
 Q. He was taken sick in March—the last of March?  
 A. March and April—I think that was the time of his sickness.  
 Q. Where was this?  
 A. Why it was every hour in the day.  
 Q. When was it, about?  
 226 A. In March and April, both.  
 Q. The first time, then, was in March?  
 A. Yes.  
 Q. Where was that first occasion that he used profane language to you, or in your presence?  
 A. May be fifty times a day—every occasion.  
 Q. I want the particular occasion?  
 A. On every occasion ; perhaps he wants a little soup, and I——  
 Q. Wait one minute—it is a fair question I have asked  
 227 you, and I want a perfectly candid answer ; you can remember some occasion when he used profane language, what the circumstances were—tell me one particular occasion?  
 A. One time I went down for a little soup, and I was not quick enough fetching it up, and then he used very profane language.  
 Q. You came back with the soup?  
 A. Yes.  
 Q. Then, what did he say?  
 228 A. He used profane language—must I repeat everything over?  
 Q. Yes ; I want his remark—what answer did he make?  
 A. Well, he cursed an hour—he used profane language.  
 Q. What expression did he use?  
 A. No other expression than that he only set too and used profane language.  
 Q. He swore at the delay?

A. He swore at the delay and everything else. 229

Q. You can give us some little idea of what the expression was?

A. He used profane language—that is all I care for.

Q. When he was annoyed by the delay?

A. He was not annoyed by the delay.

Q. He did swear because of the delay?

A. There was no delay.

Q. You said he said there was?

A. I don't know whether he did or not.

Q. You have already said that you were delayed coming up? 230

A. No, I have not.

Q. How long were you gone?

A. Probably two minutes.

Q. And he complained of the delay?

A. No, he only swore; he used profane language.

*The SURROGATE:* Tell me just what he said?

A. I don't want to; he called me everything.

Q. On that occasion—what was the expression he made use of? 231

A. That—I hate to call such things—I don't think it is right; it is not pleasant for me to——

Q. I would prefer having just what he said?

A. He called me bitch and everything else; I can't say it; he took everything.

Q. What time in the day was this—this particular occasion that you have got your mind on now?

A. This, maybe, was about eleven or twelve o'clock at night. 232

Q. Where had he been that day?

A. At home; in bed sick; he was confined to his house.

Q. Then he was sick in bed at that time?

A. Yes, sir; he would get up and just go up and down stairs, but he was under the doctors hands at that time.

Q. This was about eleven o'clock at night, when the soup came back, that he made this profane remark to you about it?

233 A. Oh, yes.

Q. There was one occasion to which you have alluded, which must have made a strong impression on your mind, and that is this knife throwing?

A. No, sir; it was before he was sick.

Q. When was that?

A. I should think that was in February

Q. He had recovered then from his sickness?

A. Yes, sir.

Q. What meal of the day was it?

234 A. At dinner.

Q. At what time did you dine?

A. I think, at that time, we dined about six o'clock; sometimes we dined at three; we have some days, but that day I think it was six o'clock.

Q. He had been to town that day?

A. No, he had not.

Q. How many were at the table?

A. Oh, my daughter and Mrs. Gates; there was only the four of us.

235 Q. Tell me the conversation that took place about the time that this knife broke a glass?

A. I don't know that we were conversing; I guess we were only eating.

Q. Don't you remember any conversation?

A. No, we had no conversation.

Q. Don't you remember what his mother had said that day?

A. No, sir; she has no conversation.

236 Q. I am not asking in regard to that; I asked you whether she did converse on that day?

A. No, sir; she said nothing.

Q. What did he say during that dinner?

A. I don't know whether he said anything particular—only he took a streak.

Q. Will you tell me anything that you remember he said at that time?

A. No, I don't remember anything particular.

Q. How did you sit, with reference to him?

A. Mrs. Gates sat at the head of the table and Carl-

ton at the other end, and I sat on this side and my daughter on the other. 237

Q. When did you first see any knife movement?

A. I was eating, and all at once I saw a knife crossing across to his mother.

Q. You saw it going across the table?

A. It flew across at his mother.

Q. What you saw was a knife going across the table and striking a glass?

A. Yes, sir, a glass or a pitcher, I don't remember what it was. 238

Q. And immediately after that who spoke first, and what was said?

A. Mrs. Gates, as near as I can remember, left the room, for she was afraid of Carlton.

Q. After this knife passed across the table in some way, what was next said by anybody?

A. There was nothing said.

Q. Not a word said?

A. Not a word said, and Mrs. Gates left the room.

Q. You mean to say you saw him take a knife up and throw it? 239

A. Yes, sir.

Q. You saw him take a knife from the table and throw it in the direction of his mother?

A. Yes, sir.

Q. Your attention was called to him without a syllable being uttered by anybody?

A. Yes, sir.

Q. And he suddenly took a knife up and threw it across the table? 240

A. Yes, sir.

Q. You mean to state that as a fact in your testimony?

A. Yes, sir.

Q. Was anything said after that?

A. No, sir; but his mother left the table.

Q. How near his mother did the knife get?

A. She sat at the head of the table, and it came as near as you to the end of the table.

- 241 Q. And broke a glass or pitcher?  
 A. Yes, sir.  
 Q. This was a small table, I suppose?  
 A. A common sized table.  
 Q. Was it as long as that table?  
 A. Half as long as that.  
 Q. Was it over five or six feet in length, at the outside?  
 A. It was a small table, only four of us were sitting at it.  
 Q. And that was the performance?  
 242 A. That was the performance.  
 Q. And the matter passed off without remark?  
 A. Yes, sir.  
 Q. Now, then, you say that Doctor Gates made a visit home after his son returned?  
 A. Yes, sir.  
 Q. The Doctor don't live there generally, does he?  
 A. He has been away a great deal.  
 Q. It has not been his home for some years?  
 A. Well, back and forth.  
 242 Q. How long did he stay there on that occasion, the first time he came home after his son's return?  
 A. I think it was two or three weeks.  
 Q. That he slept there every night?  
 A. Yes, sir.  
 Q. Did he occupy his own apartment?  
 A. Yes, sir.  
 Q. Are you clear about the fact?  
 A. Yes, sir.  
 Q. Tell me when it was that he first returned—you say  
 244 that Carlton returned in November?  
 A. I don't know; it must have been in December, it seems to me; I remember I did not charge my mind with it.  
 Q. You think that he came back in December, and stayed two or three weeks?  
 A. Yes, sir.  
 Q. You say it was after the Doctor returned from Europe the last time?

A. Yes, sir.

245

Q. You say that you made him get out of the room on one occasion?

A. Yes, sir, I did.

Q. State what took place at that time—were the Doctor and Carlton together?

A. They were not.

Q. Tell me the circumstances which occurred on that occasion when the Doctor got out of the room?

A. Well, Carlton came in—

Q. In the room where the Doctor was?

246

A. No, sir—he came in very violent.

Q. He came in the room where you were?

A. Yes, sir.

Q. What did he say?

A. He said: "Are you all here," and I got the Doctor.

Q. That was the remark he made?

A. Yes, sir; before he had got up-stairs he said that.

Q. Did his father come into the room?

A. The Doctor was in the room with me; he did not see his father; he may just have got a glimpse of him, but that is all. 247

Q. What did he next say?

A. He next said that he meant to shoot him.

Q. Did he say to the Doctor: "I mean to shoot you"?

A. No, sir; he did not see the Doctor, because he got into the other room, and Mrs. Gates closed the room door on him.

Q. You said that you were in the room, and Carlton came in and said: "Are you all here"?

248

A. He said that before he came up-stairs; we heard him.

Q. I asked you what he first said?

A. He was down-stairs, and I heard his voice, and he said: "Are you all here?" and I was afraid he would injure the Doctor, and I said: "Doctor, get out of the room;" and I pushed him out of the room.

Q. He was not in the presence of Carlton at this time?

A. No.

- 249 Q. This remark, you say, was made down-stairs ?  
 A. I was up-stairs.  
 Q. The Doctor's remark : "Are you all here?" was made down-stairs ?  
 A. Yes, sir.  
 Q. And at that time old Doctor Gates was in the room with you ?  
 A. Yes, sir ; in the dining-room with me.  
 Q. Where did you next see Carlton ?  
 A. Carlton came right away up in the room where I  
 250 was—right immediately.  
 Q. And when he entered that room, who was in that room with you and him ?  
 A. There was nobody ; I guess my daughter was around in the hall ; no—yes—I think she had gone to secure a coat for the Doctor.  
 Q. What did he then say ?  
 A. He said he intended to kill his father.  
 Q. What words did he use ?  
 A. "I am going to kill—shoot my father."  
 251 Q. What did he next say ?  
 A. I don't think he said anything else.  
 Q. What answer did you make when he said he intended to shoot his father ?  
 A. I did not answer it.  
 Q. You say you think that was in December ?  
 A. I think it was ; it was in the Winter, at all events ; I think the Doctor can tell you exactly.  
 Q. Was it a month or two months succeeding his return from Europe ?  
 252 A. It was after his return from Europe.  
 Q. What time in the day was it ?  
 A. I think it was candle-light ; we had candles all lit ; it may have been seven o'clock or six o'clock—I don't remember—somewhere in that neighborhood.  
 Q. You say you heard his voice down-stairs, coming in the house ?  
 A. Yes, sir.  
 Q. Where had he been that day ?  
 A. He had been to New York ; he knocked at the basement door and the girl opened the door for him.

Q. You said something about seeing a revolver in his pocket—what do you mean by that—that you actually saw the revolver inside his coat-pocket? 253

A. Yes, sir; he had it here in his coat-pocket.

Q. Did he have it in an inside pocket?

A. Right here in the side.

Q. In what pocket did you see it—was it in his inside pocket?

A. Well, I declare.

Q. You said you saw it in his coat-pocket, and I ask you whether you saw it in his inside coat-pocket? 254

A. It was in his coat-pocket; he sat upon the sofa, and it fell out of his pocket on the floor.

Q. You say that you saw him upon one occasion or more take hold of his mother and pinch her—I will take the occasion when you say you entered the room and he had his mother by the arm?

A. Yes, sir.

Q. Tell me when that was if you can?

A. That must have been in March or April; I don't know exactly. 255

Q. Was it after he had recovered from his sickness?

A. No, he was sick; he had not recovered.

Q. And his mother, at that time, you say, used to go up and down, back and forth from New York?

A. He was sending his mother.

Q. What room was it in the house that this occurred?

A. In his library.

Q. You entered the room you say?

A. Yes, sir; Mrs. Gates screamed and I went to her relief. 256

Q. Please state what he said, and what his mother said after you entered the room?

A. His mother said nothing.

Q. What did he say?

A. He took hold of me—grasped me.

Q. What did he say?

A. He didn't say a word.

Q. When you got to them he had his mother by the arm, pinching her?

- 257 A. Yes, and I told him if he didn't let go his mother, I would call the police——
- Q. And then he let go of his mother?
- A. Yes, and took hold of me.
- Q. When was that?
- A. In the morning, about eleven or twelve o'clock.
- Q. He was well enough to be up—out of his room.
- A. Yes, sir; he was not well, but he would get these spells, and would jump right up, like lightning; the doctor was attending him all the time.
- 258 Q. At that time was he sick?
- A. He was very ill.
- Q. He was under the doctor's treatment at that time?
- A. Yes, sir.
- Q. What doctor attended him?
- A. Doctor Upham.
- Q. Doctor Upham attended him at that time?
- A. Yes, sir.
- Q. Let us come to the occasion in which you said that he told his mother, that if she did not give him something he was asking for, he would pitch her down stairs—when was that?
- 259 A. In March sometime.
- Q. While he was still sick?
- A. Yes, sir.
- Q. Before he had recovered from that illness?
- A. Yes, sir.
- Q. Were you present when the controversy commenced between them?
- A. No, I was not, but I heard it.
- 260 Q. Were you in the room at any portion of the time?
- A. No, sir.
- Q. You did not go in the room?
- A. At that time he was in the little hall; we had a little private hall, and I was at the foot of the basement stairs, and I heard him say to his mother: "I will pitch you down stairs;" and I staid there so as to break the fall; I expected him——
- Q. Never mind that; you said that he told his mother that if she did not give him something he would pitch her down stairs?

A. Yes, sir.

261

Q. What was it he wanted?

A. I don't know what it was; I don't remember.

Q. You say that was in April?

A. Yes, sir; April or March; somewhere there; he was two months sick.

Q. The physicians at that time were still in attendance on him?

A. Yes, sir.

Q. Can you give us any idea as to what time of day that was?

262

A. The physician attended him in March and April.

Q. I want to know what time of day this particular occurrence took place—whether in the morning or evening?

A. I rather think it was in the morning, but I am not positive; I could not say whether it was the morning or evening.

Q. You have said that Carlton Gates, several times, said that he could not live with his mother—what reasons did he give—what was that conversation where he said he could not live with her?

263

A. He wanted to make her out deranged; I believe that is all.

Q. He said that she was deranged?

A. Yes.

Q. That was all?

A. It was nothing more than that.

Q. Be good enough to tell me any one occasion when he told his mother he would shoot her?

A. One day he said to his mother —

264

Q. Let us get when it was?

A. I don't state the time—I don't remember the time.

Q. You can tell within a few months?

A. It was in March or April—during the same illness, he told his mother.

Q. Did you hear him tell his mother?

A. I heard him tell his mother: "If my mother ever comes on the place," he told me, "or I see her, I will shoot her;" I cannot state whether it was in March or April.

- 265 Q. You said before that he told her?  
 A. Well, I supposed he did ; this was what he said to me.  
 Q. That is what he stated you ; it was not stated to her that if she come upon the place he would shoot her?  
 A. Yes, sir.  
 Q. You say that one day he took her by the throat?  
 A. Yes, sir.  
 Q. In your presence?  
 A. No, sir ; but Mrs. Gates told me——
- 266 Q. Come to that exterminating tale--tell me how that came about--what was the occasion of that?  
 A. That was the time that he took hold of me and shook me.  
 Q. The time that he took hold of and shook you on that same day?  
 A. Yes, sir.  
 Q. You mentioned, just now, that he said nothing on that occasion?  
 A. I told it all to Mr. Van Pelt.
- 267 Q. Then, it was on the occasion when he had hold of his mother, and you spoke to him, and he let her go and took hold of you and shook you, that he said : " You think to exterminate me, but, if you don't take care, I will exterminate you" ?  
 A. Yes, sir.  
 Q. You say that he charged you with stealing papers on one occasion?  
 A. Yes, sir.  
 Q. Tell us exactly what he said, and what took place between him and you on that occasion--in the first place, tell us about when it was?  
 A. It was in April or March.  
 Q. During that same sick season?  
 A. Yes, sir ; I think a few days after he was taken sick he missed the papers and asked me about them ; I told him I had not seen any papers ; I told him he had left them at some of the places he had been to in New York, or that he had lost them ; he said no, he had not--that he had them in his pocket when he came home.

Q. What did you say ?

269

A. I said : Carlton, that can't be, there is nobody who would touch your papers, because, I said, Celia is a very nice girl, and they would be of no use whatever to her ; I said : " I have not seen them ;" he said : " Oh, you have taken them."

(Signed) ANN NISBET.

MARTHA GATES, being sworn and examined before the SURROGATE, in opposition to said will, testified as follows :

270

*Examined by Mr. VAN PELT :*

Q. You were the mother of Carlton Gates ?

A. Yes, sir.

Q. What is your age ?

A. Seventy ; over seventy.

Q. Do you recollect when your son Carlton returned from Europe in November last ?

271

A. I do.

Q. How long had he been absent ?

A. Two and a half years.

Q. Had he been living on the homestead ?

A. Yes, sir.

Q. Prior to that time ?

A. Yes, sir ; all the time.

Q. During his absence, you had had charge of the place ?

A. The whole place.

272

Q. And all the business ?

A. I transacted all the business—banking business and renting business and stock ; I always did all the business—the custom-house business, and all the business to be attended to I did.

Q. All that ?

A. Yes, sir.

Q. You attended to the money remittances to him—did you ?

273 A. Yes, sir ; I wrote all the letters, and received all the letters from him.

Q. Did you notice any change in his conduct and manner after his return from Europe ?

A. There were little things, occasionally, that I felt very anxious about, because it was not Carlton.

Q. He continued at home how long after his return ?

A. He has been home.

Q. What time did he go to Newport ?

A. He went to Newport and was gone a short time—  
274 less than a fortnight, I think.

Q. During that interval between his return from Europe and his going to Newport he was living at home all the time ?

A. All the time ; I don't think he ever spent a night from home ; he was there the whole time ; he would go down in the morning and return in the evening.

Q. Was he ever attacked with sickness during that time ?

A. After his return he had a severe attack of pleurisy  
275 and congestion of the lungs.

Q. How long was he sick ?

A. Five or six weeks ; but gradually recovered—he never recovered altogether.

Q. Was he confined to his bed most of that time ?

A. Yes ; off and on.

Q. Who attended him during that time ?

A. We had a nurse.

Q. Did you give him personal attention also ?

A. I did ; the first two or three days a good deal ; I  
276 did not even change my clothes for the first two or three nights ; he kept me constantly around him.

Q. Would he allow you to go away from him—did he tell you at any time that he didn't want you by him ?

A. He told me that he thought I was the cause of his sickness—that if I went away and stayed awhile, that he thought he would get better.

Q. How long after he was taken sick did he tell you that ?

A. Oh, a day or two ; he asked me whether I would be

willing to go, and I said : "Anything that you think will do you good, I will do." 277

Q. What had he said or done, from the time of his return from Europe down to that time, that you thought strange and unusual ?

A. He was very impatient, and could not get anything to suit ; his coffee would not suit, and he would throw it away, or the spoon would not suit, or the dish would not suit ; little things of that kind—trivial things—various little things like that.

Q. Did his mind seem to be occupied by trifles ? 278

A. Yes, sir ; trifling things.

Q. About arranging and disarranging the furniture in the room ?

A. That was very noticeable after he came from Europe, and all during the Spring, and there were other little trifles—such things as carrying the keys away.

Q. After his return from Newport in August, state what his conduct was in connection with the furniture ?

A. He went to Newport, and returned wildly—oh, he was in a wild state when he came home, and he said to me : "Mother, my library is all in disorder ; it is all disorder through the house—come up-stairs immediately—it is all disorder ;" I took a woman I had in the house named Jane, and made her come up with me, and I said : "What is it, Carlton"—he said : "Mother, the books have all been changed ; the chairs are changed—the chairs are not in their places." Says I : "Where do you want them changed ? Jane, you put the chairs in order ;" and he said : "No ; you must do all the work in the room ; nobody shall change them but you ;" "Well, what shall I do ?" the chair was in its place at the time, and he said : "Mother, move it ;" and I moved it so, and he said : "It ain't quite right, keep moving it ;" and I would move it again, and he would say : "Keep moving it ;" and I would move it this way and that way, and he would still keep telling me to move it, and I would move it, perhaps, twenty times, and then he would say : "That will do, you can go down-stairs." 279

Q. Did he stand over you all the time ? 280

281 A. Yes, sir ; and I trembled with fear, sometimes, he would take hold of me.

Q. State the things he said and did, that were strange and unusual before his March sickness ?

A. Well, he would come along ; he would be annoyed by little things ; maybe he would take up a pitcher of water and say : " Now, mother, hold still, I won't hurt you," and he would take the pitcher of water and throw it over my head, and down my dress ; I would stand perfectly still, and after he had done it he would say nothing  
282 about it ; I would not speak of it, but make the best I could ; perhaps I did not even mention it to the family—I might, or I might not.

Q. How often did he do that ?

A. He poured water on me two or three times.

Q. How much water would he pour on you ?

A. Well, a pitcher full, so that I would be obliged to change my clothes.

Q. Was anybody by at the time he poured this water on you ?

283 A. No, he was pretty cunning about that.

Q. Nobody was by when he poured the water on you ?

A. No, I don't think there was.

Q. Did he ever use any violence towards you ?

A. He used to shake me pretty hard at times.

Q. Where would he take hold of you ?

A. By the arms ; and sometimes he would throw me on the sofa—pitched me on the sofa like——

Q. Would he pinch you so as to hurt you ?

A. Well, he has.

284 Q. So that you would scream from pain ?

A. I have.

Q. Do you recollect one occasion when he was pinching you, when your sister Mrs. Nesbit came to you ?

A. I do, perfectly well.

Q. What did you do then when he left you ?

A. He took hold of her after leaving me.

Q. In the same way ?

A. In the same way.

Q. Did he tell you to sit down before him ?

A. Oh, yes.

285

Q. Tell us what his manner was on those occasions?

A. He would say: "Mother, sit down before me; now, mother, look me straight in the eye—don't take your eye off me."

Q. How close would he make you sit to him?

A. As close as I am to that gentleman [meaning the stenographer, who was about two feet from the witness]; then he would say: Now, mother, don't you take your eyes off of me;" I used to be terrified, but I never used to oppose him.

286

Q. What would he say on such occasions?

A. He would talk about anything he had a mind to; he would say: "Now, mother, you must get ready and go away; I don't think I shall get well; I feel distressed with all you around;" then I would say, "I will go;" he would say: "Are your clothes ready?" says I, "I will have my clothes ready in a little time; I will go any time you say."

Q. When he would be looking you in the face, sitting opposite to you, what would he say; would he make any threats?

287

A. "Why," he says, "you know that you are killing me by inches—me your only son; and how can you be so hard on me—how can you be so cruel?" well, I would make an excuse that I would go and get my clothes ready, and get off as quick as I could, and I would pack up and get away.

Q. Did he ever threaten to shoot you?

A. That was after he came back from Newport.

Q. Well, at that time, what did he say?

288

A. Well, the first thing, was his moving of these chairs, and the next day, or a day after, he says: "Mother, I want you now to go down to Doctor Wood; I cannot trust anybody but you, mother; I want you to go yourself, and take this letter down and see the Doctor, and tell him how sick I am;" says he: "Will you go;" "Yes;" "Will you go by the 8:20 train;" "Yes, I will go by the 8:20 train." Then he said: "I want you to stay until the first of November, and not come back to

289 the house—will you do so?" "Yes," I said, "I will do so;" then he said, "I will give you ten minutes to put up your clothes." "Well," says I, "I don't want my clothes; I will go right away." "Carlton," says I, "Don't keep me"—for he was very outrageous you know, and I wanted to get away from the room; I started to go down stairs and he called me back again. He says: "Mother, the cars won't be here quite yet." He says: "You must see Doctor Wood yourself; I want you to look me straight in the eyes; I will shoot you now, if you don't go to New York and stay; I can shoot you mother; do you believe now, that I would shoot you?" "Yes," says I, "I do;" "Mother, do you believe that I would shoot you?" "Yes," said I, "Carlton, you tell me that you would shoot me, and I believe that you would;" "Now, do you sincerely believe that I will shoot you?" "Yes, I am sure of it;" he repeated that two or three times, and I said, "Yes;" and then I told him the cars would come and I must go.

Q. Did he have a revolver?

291 A. He said he had on the table, but I was afraid he had it in the bed; he was saying that he would shoot me, and I got out of the room as quick as possible.

Q. What was his manner towards you, changeable—at one time good and at another very violent?

A. Yes; when he was himself he was as kind as could be and thought nobody ever had so good a mother, and he thought that no one could be so kind to him as I was.

Q. Did you give him any cause for his antipathy?

292 A. No, sir; it came on by degrees—when he came back it came on gradually.

Q. Did he ever choke you at any time?

A. Well, that day before I went to the cars, he said to me before I went for Dr. Wood: "I am fearfully sick mother; you don't know how sick I am." He said: "I can't stand on my feet." And I don't think that he could without help, and all at once he got out of the bed in a minute and took me by the throat—I thought that he would strangle me; I think I feel it yet; it was a severe choking that he gave me.

Q. How long did he choke you? 293

A. It did not seem more than a minute or two.

Q. Was it very violent so as to strangle you?

A. It was very violent so as to strangle me.

Q. Did you scream when he was choking you?

A. Yes, sir; as much as I could.

Q. What occurred after that?

A. Then, you know, he called me back and talked about the pistol and shooting me, and each time he made me look him right in the eyes—He would say: "Mother look me right in the eyes." Says I: "Carlton I do." 294 Then he said: "Mother are you afraid of me?" And I said: "Carlton, I am not."

Q. Did you have charge of everything in the house during his absence in Europe?

A. Yes, sir.

Q. The plate, furniture and everything?

A. Yes, sir.

Q. Had he made you presents?

A. Yes, sir; always back and forth.

Q. Did he send you presents from Europe? 295

A. Yes, sir; he brought me a handsome watch and chain five or six years ago.

Q. Where is that?

A. I had always been wearing it and I came home with it sometime in April, May, or June, and he said: "Mother, where is that beautiful watch I gave you? I told him that I was wearing it, and he said: "You will lose it, you cannot be trusted with it—or something of that kind—wont you let me have it?" I said: "I will give it to you sometime." He said: "Where is it?" 296 I said: "I will give it to you after breakfast." "Well, give it to me now; have you lost it?" I said: "No, it is on my neck." Then he said: "Give it to me right away." And I took it off and gave it to him.

Q. What did he do with it?

A. I don't know.

Q. What else did he take from you that he had gave you?

A. On Sunday, I was going to church, and I was put-

297 ting on my sleeve buttons, they were a beautiful set which he had sent me from Europe ; when he was going to Europe he told me that he would send me anything I wanted, and asked me to give him a list, so I sent for a number of articles and then he asked me whether there was not something else—He seemed so anxious to bring me everything, that I said : “ You may bring me a pair of sleeve buttons.” And he brought me the sleeve buttons, and I had been using them until within a few weeks ago, and, as I was putting them on the wrist,  
 298 he saw them, and said : “ Mother, you don’t want those sleeve-buttons—can’t you let me have them ? ” I said : “ Yes, if you want them, I will give them to you.”

Q. He was then in bed ?

A. No, sir ; he was down on the sofa ; I said : “ You can take them if you want them ; ” I never contradicted him because I knew that he was deranged, and I humored him all I could.

Q. How about the bracelet ? ”

A. The bracelet I had not used for some time, and I  
 299 thought it was among my things in the house until the will was read, and then I heard that Mr. Hulbert had it.

Q. Where did he get it ?

A. He brought it from Europe years ago.

Q. That is the article called the Circassian bracelet ?

A. Yes, sir ; he brought it from Europe five or six years ago ; I could not see the date.

Q. Down to what time did you have it in your possession in the house ?

A. I always had it, and I thought I still had it until  
 300 the will was read.

Q. What other articles did he take from you ?

A. He did not take anything from me but the watch and sleeve-buttons and bracelet.

Q. And you have never seen them since ?

A. No, sir.

Q. Where were you during his last sickness ?

A. I was back and forth ; he used to write for me ; sometimes send for me to come back, and I would come right back.

Q. Where did you go—what were you principally doing? 301

A. I was not doing anything; I came back and forth to see how he was doing.

Q. Did you see any doctors about him?

A. Yes, sir; I saw Doctor Wood and inquired particularly how he was, and I saw Doctor Arnold; I came up on Saturday afternoon, at half-past twelve o'clock, with the intention of staying in Yonkers somewhere until Carlton got better or worse; I finally went to Doctor Rhinefelder and asked him if he could help me for a time.

Q. That was the time Carlton died?

302

A. Yes, sir; I stated that Doctor Rhinefelder——

Q. Did you go to your house at any time?

A. Yes, I wanted to go to the house.

Q. Was you allowed to go into the house?

A. No, sir.

Q. Who did you find there, who told you not to go in?

A. I found Mr. Hulbert; I met him in my dressing-room; I opened the dressing-room door that went on the piazza, and Doctor Wood was coming out; I came up in the cars with Doctor Wood, and I opened the door, expecting to speak to Doctor Wood—and Mr. Hulbert made his appearance, coming down stairs with Doctor Wood; I then said to Mr. Hulbert: "Mr. Hulbert, as you are here, I think I might stay here;" and he said: "Mrs. Gates, I don't think it would do, for you know that if Carlton was to find out you were here, he might get into a spasm and die in a spasm, and then you would blame yourself;" that terrified me, and I said to Mr. Hulbert: "I hope you will take good care of him; I am glad you are here; I think you will take good care of Carlton." 303

Q. Were you there again?

A. No, sir; he told me never to come near the house.

Q. Who told you that?

A. Mr. Hulbert.

Q. On how many occasions?

A. Well, twice; at one time I wanted to see him and know particularly how Carlton was, and had him come to Doctor Arnold; and he said: "It won't do for you to come to the house, Mrs. Gates." 304

305 Q. Did you send to the house for any articles that you needed ?

A. Yes, sir ; I went for some clothing ; I was very cautious ; I sent a note to Mrs. Miggy.

Q. Please come down to the interview you had with Dr. Hulbert, when you wanted some clothing and went to the house ?

A. I wanted some clothing, and I wished Mrs. Miggy to let me in the house secretly ; Mrs. Miggy did not let me in, and I went into my dressing-room, and my cook had brought me a cup of tea and some refreshments up into the dressing-room ; she wanted me to go into the dining-room, but I said I would not go down stairs, and so she brought it up into the dressing-room, and Mr. Hulbert came along and says : " Don't stay, he will find you out ; you had better go " ; I did not take the cup of tea ; I went.

Q. Did you get your clothes ?

A. No, sir I could not stay at all ; they frightened me out of the house.

Q. Did you make any further attempts to get into the house ?

307 A. Yes, sir ; I made inquiry as to whether I could get into the house, and I got Mr. Hulbert to come over to Dr. Arnold's to see if I could get into the house, and he thought it was better for me not to go to the house, and I did not go to the house ; this was on the day or the day before the will was executed.

Q. When did you first come into the house ?

A. On Saturday evening, about seven or eight o'clock.

Q. Was that after your son's death ?

308 A. Yes, sir ; I came up in the eleven o'clock train on Saturday morning.

[At this point the Court adjourned until Friday morning, October 1st, 1869, when the examination of the witness was resumed, as follows] :

Q. Did you notice anything strange or peculiar about Carlton's eyes after he returned from Europe the last time ?

A. Yes, sir.

Q. State what it was?

309

A. Well, a peculiar glance of the eye; he would stare at me—"Mother look at me; look at me right in the face."

Q. Was it different from the natural expression?

A. Different from the natural expression; turned the eye you know; turned it—I could not turn my eye just as he did.

Q. Was it quite apparent?

A. Yes.

Q. How would he do it?

A. He did it at various times; no matter what dress I had on he would take a cup of coffee and come near by me and throw it over me.

Q. Over what part of your person?

A. Over my dress; he would just give it a toss, you know, a slight toss, and it would go over me.

Q. A whole cup full?

A. Yes, sir; sometimes the coffee hot.

Q. Did he ever strike you on the head with a book, or any other thing?

A. Yes; he took me in the library and put a book, or his hand, I don't know exactly which, I think it was a book, on top of my head.

[Mr. LYON objected to the course of the examination, and insisted that the witness should tell her own story without the assistance of questions.]

Q. Well, enumerate all the acts of violence that Carlton committed, that you can think of?

A. Well, he put a book or his hand on my head, I cannot tell which, and then he took his other hand and slapped it on top of my head; it stunned me very much; he shut the door before he did this, and then he opened it and said that I could go.

Q. He took you into the library and put a book or his hand on top of your head, and then slapped it with his other hand and stunned you?

A. Yes, sir; almost stunned me.

Q. How often would he do that to you?

A. I think he did it but once.

Q. When was that?

312

313 A. That was a little before he went to Newport.

Q. Mention any other acts of violence on his part that occurred to you ?

A. He once came into my room unexpectedly to me and pressed my jaws in ; he took me by the jaws—not by the throat, and pressed them so hard that a tooth dropped out of my mouth ; it bled very much, and hurt me very much.

Q. Describe the manner in which he pressed your jaws?

314 A. He took hold of my jaws in this way, and pressed my jaws so hard that one tooth dropped in my mouth, and it bled very freely.

Q. Was it a natural tooth ?

A. Oh ! yes ; I never had a false tooth in my head.

Q. What else do you remember ?

A. When he went to Newport, and very soon after this, he came home very wild, indeed.

Q. What acts of violence did he commit then ?

A. He went up stairs, and he made me go up before him, and he then took me by the throat.

315 Q. Was that the occasion you spoke of yesterday ?

A. I think I spoke of it then once after that again.

Q. How soon after ?

A. It was seven or eight days before he died—somewheres along there—I did not expect it, he jumped out of his bed ; he had just told me that he could not stand on his feet ; he used to send me for Doctor Wood ; he said : “ Mother, I am not able to stand on my feet ; go for Doctor Wood as soon as you can ; ” and then he jumped out of bed and took me by the throat—very

316 strong, you know—and then he went to bed again.

Q. What other acts of violence do you remember ?

A. Then he told me that I might go straight off to New York, and I went down stairs ; he rang the bell and called me back, saying that he wanted to see me once more ; then he says : “ Mother, I will shoot you unless you go away.

[Mr. Lyon objected on the ground that the witness had already testified to the interview she was then detailing].

*Witness :* He then says : “ Mother, I will shoot you—

look me straight in the eye—you must look me straight in the eyes.” I was as near the bed as I could get; then he says; “Do you believe I would shoot you?” “Yes,” said I, “I believe you would;” “Mother do you really believe that I would shoot you?” “Yes,” says I, “Carlton, you say you will shoot me, and I really believe you would.” 317

Q. You saw acts of violence other than those you mentioned yesterday—can you recollect?

A. That was the last time I saw him.

Q. Did he do any injury to your dress at any time? 318

A. Oh, yes; times without number he would do it.

Q. What would he do?

A. He would throw coffee or water on me.

Q. Would he tear your dresses?

A. Oh, at one time I had a new dress on—a new calico dress—it had been washed, you know, once, and I was sitting on the sofa; he came up stairs, without saying anything, took hold of my dress and tore it entirely to pieces, and he said; “Now, there;” and went away and left me, and said no more about it. 319

Q. Do you recollect the night when he threatened to shoot his father—when he inquired if his father was at home?

A. That was in the cold weather.

Q. What month was it?

A. I suppose it might have been in January.

Q. January last?

A. Yes, sir.

Q. Describe that scene?

A. He came and knocked at the door—he came up very furious; that was the time he was intoxicated, and it was the only time that I ever saw him in that condition—I never saw him intoxicated before or since, because he was not a man of intemperate habits—he was a very temperate man; he ran up-stairs and the doctor was in the dining room, and we got the doctor in his own room, and he went out of the side door; that was the last I saw of the doctor that night; he went away, and went to some public meeting. 320

321 Q. Where did you go ?

A. I was afraid, then I went out of the house ; I said that I would stay out of the house ; it was a very cold night.

Q. Where did you go ?

A. I made my refuge under the steps of the piazza ; I didn't know where to go.

Q. Was any garment brought you there ?

A. Finally, they brought me a cloak.

Q. Who brought it to you ?

322 A. Mrs. Nesbit or Martha ; I don't know but both.

Q. How long did you remain there ?

[Objected to].

Q. Where was Carlton at this time ?

A. He was up-stairs ; he came home in this state, you know.

Q. What caused you to go out of the house ?

A. I was frightened.

323 Q. Were you afraid that he would do you an injury ?

A. Yes ; because he was intoxicated and deranged—both ; I knew he was deranged, and it made it the more terrifying ; I got under the steps of the piazza as far as I could go, so that nobody could find me.

Q. What interference, if any, was there with your eating at any time ?

A. Well, when he was himself he was very kind, and he would give me everything ; but, at times, he would sit down with the housekeeper, and he would serve her with everything on the table, and would not offer me anything—this happened a number of times ; I would not say anything ; I would have a little fish, or something of that kind, and would pass it off quietly—I always passed everything off quietly ; I never interfered at all.

324 Q. Sometimes you would not eat anything ?

A. Yes, sir.

Q. Then, at other times, how would he treat you ?

A. He would give me the best on the table, and say : “ Mother, you must eat beefsteak, and take a glass of

wine at dinner—don't ever fail to drink a glass of wine 325  
at dinner;" and sometimes he would insist upon me  
taking two glasses, so that I would get well and look  
strong; he would seem to feel sorry for me; he would  
say: "Mother, you don't eat—you ain't strong."

Q. How about the lemonade?

A. That was after he came from Newport.

Q. State it?

A. He called for a glass of lemonade quick as possible; I made it; then he called for another glass as quick as possible, which I made, and then another glass; 326  
I made three glasses for him as fast as possible; then I made it in a large glass dish, thinking that he would want it during the night, he would want it so quick; then in a short time he called for more lemonade; then I sent the large bowl to him, and he said: "Did you ever see such a thing as a large bowl of lemonade; why didn't you make it in a proper thing; why wasn't it put in a proper thing," and he took it and tossed it out of the window, glass and all.

Q. Bowl you mean? 327

A. Yes, it all went out of the window and was broken.

Q. What, if any charge, did he make against you in regard to stealing papers from him?

A. He thought I had stolen; he wrote to me in New York that I had stolen some papers; caused me—

Mr Lyon: Have you got the letter?

I had it; I don't know whether it is here or not.

Q. What did he say to you; did he say to you at any 328  
time anything on the subject of stealing letters or taking letters?

A. He wrote to me.

Q. He didn't say it?

A. I think he wrote me; when he saw me afterwards, he asked me if I ever had taken papers; I told him I never had, and he said: "Mother, I don't believe you ever took any papers from me."

Q. What did he say on the subject of poisoning if anything?

329 A. Once he sent for me to come home in haste ; that he wanted to see me, and he said : " I have had a very strange feeling to day ; I think I am poisoned ; do you think Mrs. Nesbit would poison me ? " " Oh, no," says I, " she would not dare to do so, for she has the fear of God before her ; " and I never heard anything more of poisoning from him ; that was the first and the last of it ; I think he took my word for it.

Q. When was that ?

A. That was in the Spring, while he was sick ; he was  
330 recovering some, but he was poorly ; it might have been in April, I think.

Q. Did Carlton tell you at any time about his making a will two or three years ago, before he went to Europe the last time ?

A. Yes, sir ; five years ago.

Q. What did he tell you on that subject ?

A. He told me that he had made his will—" Mother I have made my will ; I think if I was called away you would not have things just as I would like you to have  
331 them ; now, I am going to leave plenty for you, if I should be cast away going across the sea ; you must keep your carriage, and have servants to wait on you, and don't do a thing but take good care of yourself ; there is abundance for you, and you must stay in this house, because I think you will be better off in the house than anywhere else ; there will be abundance for you—everything is yours, everything shall be yours.

Q. Did he say anything about giving a legacy to any one, and if so, who ?

A. He said he would give a legacy of \$500 to Mrs.  
332 Darling, if I had no objection ; " No," says I, " I am perfectly willing you should do so."

Q. Had you made your will also ?

A. I made my will before or after, I am not certain ; we both made our wills about one time.

Q. Where is your will ?

A. I don't know.

Q. To whom did you give it ?

A. Carlton took it ; what became of it I don't really know.

Q. Is it now in the possession of Dr. Hulbert? 333

A. I heard say that the Doctor had it, and carried it round the village.

Q. The last you saw of it, it was in Carlton's possession?

A. Yes, sir; I have heard that the Doctor was carrying it around the village and showed it, and I believe it is true.

[Mr. Van Pelt called upon the counsel for the proponents to produce the will in question; Mr. Lyon 334 declined; the Surrogate said that the will had nothing to do with the case.]

Q. What was the amount of the securities belonging to Carlton, or that were in his possession; have you made a statement of them?

A. I have made a statement; I guess I must have left it at home.

Q. Look at that, and state what is the amount of the securities? 335

A. Two hundred and forty thousand dollars.

Q. Don't you use glasses?

A. I don't use glasses; I never have used them; I have never had occasion.

Q. What is the first item—the securities?

A. The first item is seventy-five thousand dollars.

Q. That is the securities?

A. Yes, sir.

Q. What is the next?

A. Thirty-five thousand dollars. 336

Q. What is that?

A. Real estate in New York.

Q. What is next?

A. Personal property thirty thousand dollars.

Q. Personal property in the house?

A. No, not in the house—yes, it must be in the house.

Q. And the homestead?

A. The homestead about one hundred thousand dollars; that is my statement.

337 Q. You conducted all the business for Carlton; the banking business and other business?

A. Yes, I have always done it.

Q. And had the supervision and charge of these securities during his absence?

A. Yes, sir, always; and likewise the Custom House, and done it without a broker frequently.

Q. Look at that letter and state from whom you received it?

A. This is my son's letter he wrote to me from Newport.

338 Q. That is his handwriting?

A. Yes, sir.

Q. And you received it?

A. Yes, sir.

Q. Will you look at that, also, and state from whom you received that?

A. These are Carlton's letters all of them.

Q. What is the date of that one?

A. March 26th, 1869.

339 Q. What is the date of the first one I showed you?

A. August second.

[The letter dated August 2d was offered in evidence, and marked contestant's Ex. "B."]

[The letter dated March 26th, 1869, was offered in evidence, marked contestant's Ex. "C."]

340 Q. Do you remember the circumstance of Carlton's throwing a knife at you at the table?

A. Well, that was at different times.

Q. Was it on more than one occasion?

A. Yes, sir; on a number of times; a knife or fork; I did not know it was going to come—he would just toss it; it might be a wine-glass.

Q. After Carlton was dead did you go to the house?

A. I went to the house.

Q. How soon?

A. Between seven and eight o'clock on Saturday evening.

Q. Who did you find there ? 341

A. Mrs. Migy.

Q. Who else ?

A. I did not see anybody there who came to speak to me at all but Mrs Migy.

Q. Who else was in the house ?

A. I really don't know, sir ; I suppose all the servants were there ; I did not see anybody but Mrs Migy.

Q. Did you see Dr Hulbert ?

A. No, I did not.

Q. When did you first see him ? 342

A. I think I saw him that same evening, a good while later—late in the evening.

Q. Saturday night ?

A. Yes, sir.

Q. Did he remain there ?

A. He did until the Thursday afternoon following.

Q. What, if anything, did he say to you on the subject of your having no right to remain there any longer ?

A. This was after Carlton's death ; he did not. I retired to my own room on Saturday evening, but I did not undress or go to bed ; I sat in my chair, and did not see Mr. Hulbert after that until the next morning ; the next morning, at nine o'clock, the servants came down stairs—Miss Sault, the housekeeper—and after she was down an hour or about that, I rang the bell ; I saw the waiter-girl setting the table, and I told her to go down and send me up a cup of tea and a crust of bread or a cracker ; I did not want anything else ; I did not care which. 343

[ Mr Lyon objected ].

344

Q. Come right to Dr Hulbert ; tell us what transpired between him and you ?

A. I didn't see Dr Hulbert, I believe, until Sunday evening, and then he made a very short prayer, and that was once, and only once, in the house.

Q. Did you remain in the house continually from that time on ?

A. All the time in the house ; kept my room.

345 Q. What further transpired between you and Dr. Hulbert?

A. Well, I did not see Dr. Hulbert until he got confused about getting pall bearers, and could not get more than six; he wanted me to assist him in getting eight.

Q. Do you remember that Dr. Lee was present at any time?

A. He called to see me as a friend on Sunday afternoon; he called to see Carlton; he had not heard of the death of Carlton, but came down because he heard that  
346 he was sick, and he took tea at our house, and then went out on the piazza, and bid Dr. Hulbert good night, and then came back and bid me good night; I told the Doctor to stay all night, that my husband was not at home and I would like him to stay.

Q. Was Dr. Hulbert present?

A. No, sir; not in my room.

Q. I want you to state anything that transpired in the presence of Dr. Hulbert?

A. I never saw him in my room to talk to him, at all;  
347 he never came to see me.

Q. Did you see him outside?

A. No, sir; not until he called to see me about the pall bearers.

Q. That was on the day of the funeral?

A. Yes, sir; I did not get my cup of tea—I want you to remember that they would not allow me to have it.

*Cross-examination:*

Q. What year was it that your son went to Europe the  
348 last time?

A. I won't state the year, you can cypher yourself; he was gone two and one-half years; he came home last November.

Q. At the time he returned last November, will you be good enough to tell me what your family consisted of, and whom?

A. Mrs. Nesbit and daughter, and two servants and myself.

Q. Do you happen to remember whether there was a cook and chambermaid?

A. That is the servants that were in the house ; I had 349  
them when he came home.

Q. How long did they remain in the house after he  
returned ?

A. I think they remained one month or six weeks—  
one may have remained longer ; servants I could not  
keep ; as fast as I brought them in he would turn them  
off ; I could not keep any servants ; they went off as fast  
as I got them, and I had to give it up.

Q. You don't remember the names of your servants ?

A. No ; I could not tell, because I do not remember 350  
them at all.

Q. From that time until he was taken sick, which was  
when—that you have stated he was taken sick ?

A. He was taken sick about the first of March—  
somewhere along there ; it may have been the third or  
fourth ; I guess I have the date home ; but a day or two  
don't make much difference.

Q. During that period of time, will you tell me how  
many changes of servants afterwards there were in your  
house ? 351

A. I was not there ; I went back and forth ; I could  
not do that ; others could do that.

Q. Can you tell me ?

A. I could not do it ; I was back and forth myself,  
you know ; I did not go into the kitchen ; he forbade  
me to bring any more, and sent others down.

Q. Then your answer is, that you do not remember  
how many changes of servants there, were from his  
return in November until he was taken sick ?

A. No, I could not tell ; the others in the house could 352  
tell better than I could ; there were a great many ; he  
frightened them away.

Q. From the time he was taken ill in March, how long  
did he remain ill ?

A. I don't think he ever recovered entirely from that  
illness, but he got a great deal better, you know, so that  
he went out, down to New York and around the house.

Q. When did he first go to New York after he was  
taken sick ?

- 353 A. I could not tell you ; I heard he was in New York, but I did not see him ; I knew he had been down.  
 Q. Then you could not tell how long he was confined to the house ?  
 A. I should think he was confined until some time in April.  
 Q. You said that you saw him the first two or three days of his illness, and after that that he was cared for by the nurse ?  
 A. Yes, sir.
- 354 Q. Who was it—a man or a woman nurse ?  
 A. A woman.  
 Q. What was her name ?  
 A. Hester White.  
 Q. Did she remain as part of the establishment up until his recovery ?  
 A. Yes ; she was there some months.  
 Q. Where is Hester White ?  
 A. Well, she was at my house to-day and said she would be here.
- 553 Q. You stated yesterday, and there was a good deal of confusion in regard to the statement, though I think it was not your fault, that Dr. Hulbert told you that it would not be safe for you to be there ; that you excited your son so much that his health made it necessary for you to go away, or something to that effect. Did that occur more than once ; did you hear Dr. Hulbert on the subject of your not staying in the house more than once ?  
 A. Twice.  
 Q. Just state when those two occasions were ?
- 356 A. It might be three times, I am not certain ; the first time I was there to get some clothing, and he told me that ; he advised me to go out and not come to the house—not to stay at the house—because if Carlton should hear of it, it might throw him into one of those spasms.  
 Q. About when was that ?  
 A. That must have been seven or eight days before Carlton died ; it was on a Wednesday, I think.  
 Q. The Sunday of the week before he died ?  
 A. I think so—Wednesday or Thursday—one of those days.

Q. You don't mean to say that it was on the Wednesday preceding his death? 357

A. No, sir.

Q. Was anybody with him at that time?

A. I don't know.

Q. Was anybody with him at that interview?

A. No; Dr. Wood came down stairs with him; I met him; I did not know that Mr. Hulbert was there; and I said to him, "I am very glad to see you here."

Q. At the time he made that communication to you, was anybody with him who could have heard what took place between the doctor and you? 358

A. I don't think there was, because I was in the dressing-room; there was nobody, unless it might have been the cook; she brought me a cup of tea.

Q. Then this was in your dressing-room?

A. Yes.

Q. He came into your dressing-room?

A. Yes, sir.

Q. Now, when was the other occasion when he said that, or anything like it? 359

A. I had sent for him to meet me at Dr. Arnold's; I wanted to inquire how Carlton was; he came there and saw me there; I did not go to the house; I was there.

Q. Then at the house, so far as any communication between you and Dr. Hulbert was concerned, that is the only occasion that such communication took place there?

A. I think so.

Q. You say that Dr. Wood was with him?

A. There might be another time; I am not quite clear about that. 360

Q. You say Dr. Wood was coming out of the room with him?

A. Dr. Wood came down stairs out of the street door; they both came out of the street door on the piazza.

Q. On that day, did Dr. Wood or Arnold, or either of them, or both of them, have any communication with you on the subject?

A. Dr. Wood went right away, in his carriage, home, and left Dr. Hulbert with me.

361 (Question repeated.)

A. Neither of these, I told you, said anything on the subject; Dr. Hulbert hurried me away.

Q. You understand my question—it is, whether on that day Doctor Wood or Arnold, or either of them, made a communication of the same character to you that Doctor Hulbert did?

A. Doctor Wood had told me.

Q. I am speaking of that day—confine yourself to that day?

362 A. The thing is all settled; I can't answer you any more.

Q. They did not make any such communication to you?

A. I can't say anything more about the date.

Q. You can answer the question?

A. No; I cannot answer any more.

Q. Then I shall understand you as stating that they made no such statement to you on that day?

363 A. I told you that Mr. Hulbert told me to leave the house.

Q. I am talking about Doctor Wood and Doctor Arnold?

A. I did not see Doctor Arnold, and I did not see Doctor Wood in the house; I went down to the depot, and had a conversation with him there.

Q. Did Doctor Arnold ever make any such communication to you?

A. Yes; he told me that I had better not go to the house.

364 Q. When was that?

A. I went to see him soon after I visited Carlton.

Q. Did Doctor Arnold ever make the same communication to you that you say Doctor Hulbert did, or anything of that description—that is my question?

A. Yes, sir.

Q. Was it on the same day that Doctor Hulbert talked with you?

A. It was the first visit, I think, Doctor Arnold made; I don't know whether it was the same day or not—I would not say.

Q. Did Doctor Wood ever make any such communi- 365  
cation to you ?

A. Oh, yes.

Q. He did ?

A. Oh, yes—that is, I told him I had to do it, and he approved of it ; I told him what I was doing, and he approved of it.

Q. When was that—on the same day ?

A. That is a number of times I told him I would leave the house, and he approved of my doing so ; he said it was best. 365

Q. You have stated that, upon one occasion, he put a  
• book upon the top of your head, and after the book was there he slapped the book ?

A. He did so.

Q. Tell me where that was ?

A. It was in the library ; it was before he went to Newport.

Q. About how long ?

A. It might have been about a week or two.

Q. That, then, was in the month of July ? 367

A. I think so.

Q. What time of the day ?

A. Perhaps the morning ; it might be the middle of the day—it could not be very early ; he did not arrive until nine o'clock, and it must have been after that.

Q. Describe the transaction as it occurred ?

A. He rang the bell : “ Mother, I want you to go up- stairs ; I go : “ Mother, look me right in the eyes—look straight at me ;” he had a book in his hand—whether it was a book or his hand I could not tell ; he came out 368  
with a book in his hand, and put something on my head—I thought it was a book—and slapped a very hard slap on the head, and then he said : “ You may go.”

Q. That was all that passed ?

A. That was all—nothing more.

Q. You say that seven or eight days before he died he jumped out of bed and took you by the throat ?

A. He did so.

Q. Let us get at that as nearly at the time as possible—he died, I think, on Saturday, the 21st, which would

369 bring it up to about Friday of the week before he died—was that about the time ?

A. No ; I think it was Wednesday—it might have been Thursday.

Q. Was it this same Wednesday that the communication was made to you ?

A. No ; it was the week before he died.

Q. He died on Saturday—it was not that week—it was the week previous—the Wednesday of the week previous ?

370 A. Yes, sir.

Q. And that is the day, you think, this communication was made to you ?

A. Yes, sir ; I know so.

Q. Who was attending him at that time—was his nurse—this Mr. Higgins ?

A. No, sir ; he had not got there.

Q. Who ?

A. A female—Mrs. Migy.

371 Q. Who was present at this previous occurrence that took place when you say that he jumped out of bed and choked you, and then jumped back again ?

A. I think there was nobody in the room—he was pretty cunning about that.

Q. There was nobody in the room at that time ?

A. I think not.

Q. About what time of the day was it ?

A. It must have been somewhere before eight o'clock, I think—pretty early in the morning.

Q. Did you sleep in the house the night before ?

372 A. Yes, sir ; and I was dressing then to go to New York ; I did, I know now, and can tell you ; I was to go to take the 8.20 train to go to New York, and I only got in time for that train.

Q. Then, as soon as you dressed you went to his room ?

A. Oh. no ; my usual time for rising is five or six o'clock in the morning.

Q. You say it was before eight o'clock, because you were going to take the 8.20 train ?

A. Yes, sir ; that is the hour my son gave me.

Q. Tell me what passed between you and him when you went into the room? 373

A. He said: "Mother, I am fearfully sick."

Q. Did you say anything to him?

A. No, sir; he rang the bell, and said: "Mother, I am fearfully sick, I can't stand on my feet."

Q. You say, he rang the bell—you say, he answered the bell?

A. I don't know—I did not pay attention to that.

Q. Who brought you the message that he wanted to see you—did somebody bring a message to you that he wanted to see you? 374

A. I think most likely a little girl.

Q. Who was she?

A. I don't remember her name; I cannot call her name just now, but I know where she lives, if you want to see her I can find her.

Q. She brought the message that he wanted to see you, and you went to him?

A. Yes, sir.

Q. What took place when you got in the room? 375

A. He says: "Mother, I want you to go right down to Doctor Woods; I am fearfully sick, and have Doctor Woods come right away up here as quick as possible; I want to get you off by the 8.20 train; now," says he, "be sure and don't miss that train; I want you to go down, take the cars, and go right down to Doctor Woods' office, as quick as possible;" well, then, he said as I was going away: "Stop, mother, you don't know how sick I am; I can live but a very short time if I don't get better; now, be sure and see Doctor Wood;" then, he jumped out of bed and takes me by the throat; well, he almost strangled me; there is no mistake about it. 376

Q. And all this time you made no resistance, and said nothing?

A. I did not say anything; then he said: "Now, you may go;" I went down.

Q. There was no one in the room at the time but yourself and him?

A. I don't think there was; the little girl might have been, but I don't think she was.

- 377 Q. Was Mrs. Migy in the house at the time?  
 A. I don't think she was there.  
 Q. Was she in the house?  
 A. Yes, sir  
 Q. Was Miss Sault in the house?  
 A. Miss Sault I had not seen yet; I believe she came after I left that day.  
 Q. Did the nurse sleep out of the house?  
 A. I don't know where he slept; I never saw him in the house.
- 278 Q. Didn't he have a nurse at that time?  
 A. No; he had not arrived at that time.  
 Q. Was there not a nurse in attendance upon him at that time?  
 A. Not that day; he had not got there yet.  
 Q. Did not the nurse sleep in the house?  
 A. He had not been there yet  
 Q. What; do you mean that he had not got a nurse yet?  
 A. I told you very plainly the nurse had not arrived there.
- 379 Q. I misunderstood you then, because, I thought you told me that he had a nurse to take care of him at that time; at the time of this interview you referred to, he had no nurse?  
 A. No nurse at all.  
 Q. And nobody attended upon him as a nurse?  
 A. No; he had just arrived from Newport; he had been to New York the month previous to this.  
 Q. Are you correct as to that time—only eight days before his death?
- 380 A. It is true, he went to New York once, and I pared peaches for his breakfast the day he started to go to New York, and Mrs. Migy helped me.  
 Q. Now, on this occasion that he came to your dressing-room, you say, in the conflict in which you were unfortunate enough to loose a tooth?  
 A. I did so.  
 Q. When was that?  
 A. Before he went to Newport, a short time.  
 Q. About how long?

A. It might have been July, or the 1st of August; I 381  
did not put the date down--the amount of it is; I covered  
it up; these things I covered up.

Q. As near as you can fix this transaction, it was some-  
time in July?

A. I suppose so--the last of July perhaps.

Q. What time in the day was that?

A. Well, I suppose I don't know; it was after break-  
fast at any rate.

Q. Where did it take place?

A. In my own dressing room; he came into the dress- 382  
ing-room, and I did not expect him at all; he comes over  
and took right hold of me.

Q. He comes over?

A. Comes into the room and perhaps calls me an idiot  
or a lunatic, or something of that kind--that he did very  
often--and takes hold.

Q. And then he took hold of you here?

A. By the jaws, not by the throat, and pressed my  
jaws, and this tooth fell out and it bled freely; he was very  
much affected at seeing the blood, and turned away and 383  
said not a word; when he saw me again he was very  
pleasant.

Q. Not a word passed from you to him on that occa-  
sion?

A. No sir; he saw the tooth, for I took it out, he looked  
at it and turned around in this way; I have the tooth, and  
I don't know but I could find it yet; it lay on my mantle-  
piece for some time.

Q. This occasion when he tore your dress we would  
have been saved a great deal of trouble if you had given 384  
us any indication of the time when these occurrences took  
place; when did it take place?

A. My frock was made in the Spring.

Q. Of this present year?

A. Yes, sir; and it is likely it was in July.

Q. July of this year?

A. Yes, sir; in June, I suppose.

Q. Tell me where these circumstances took place--what  
time of the day?

- 385 A. I was sitting on the sofa in the dining-room.  
 Q. At what time of the day?  
 A. Between breakfast and dinner he had been in the yard walking up and down, and he came up stairs:—"Well," says he, "I don't like to see your face as I used to; your face has entirely changed; I can't call you mother; you are a lunatic; I want you to go into the asylum; are you willing to go into the asylum, or something of that kind; I says, "Yes, at any time you want me to go I will go;" then he takes hold of my dress and
- 386 tore it entirely off me; I can show you the dress now if you want to see it; I mended it up; it made it smaller; I think I have got the pieces left at the dress-makers; I can show you if you want to see her.  
 Q. I want the time of the transaction?  
 A. It was in the Spring—late in the Spring.  
 Q. Had he recovered from his illness at that time?  
 A. Pretty near recovered; I don't think he ever fully recovered.  
 Q. Had he so much recovered as to go out; had he
- 387 been to New York?  
 A. Yes, sir; very often indeed.  
 Q. He had been to New York often before that occurrence?  
 A. At different times; I don't know how often.  
 Q. Who was living at the house with him at that time?  
 A. Mrs. Nesbit lived there.  
 Q. Did she live there at the time this dress was torn?  
 A. No, sir; I don't think she was there.  
 Q. Tell me who was there—was Miss Seymour there?
- 388 A. I think she was.  
 Q. Was Cornelia Palmer?  
 A. I think it likely.  
 Q. Tell me who were the servants at that time?  
 A. No, sir; I can't tell you anything about that.  
 Q. Did you communicate this matter to Mrs. Palmer at all?  
 A. Certainly not.  
 Q. Didn't she hear of this dress being torn at all?  
 A. I don't know; I would rather cover it.

Q. When this assault was made upon you—when you lost a tooth—did you communicate that to Mrs. Palmer? 389

A. She was not there; this was of a later day.

Q. Who was the housekeeper at that time?

A. There was no housekeeper; Mrs. Palmer had left, and Miss Sault had not got there.

Q. Then it was after Mrs. Palmer left that this tooth business took place?

A. Yes, sir.

Q. And there was no housekeeper in the house at that time? 390

A. No, sir.

Q. Tell me who were the other persons in the house, the servants, and so on; the Nesbits had left and you were not there—left at that time?

A. The servants in the kitchen you know I don't know their names at all; they came and went just as he fancied you know.

Q. When this lemonade circumstance took place, when was that?

A. I think it was before he went to Newport. 391

Q. In the month of July, probably?

A. Yes, not long before he went.

Q. You say it was in the afternoon and evening that that took place?

A. In the evening, and I made the lemonade.

Q. Had he been into town that day?

A. I could not say whether he had been or not; he went down sometimes—I could not say.

Q. You have been asked in regard to this will could you tell me when you made it? 392

A. I made it about the time Carlton made his.

Q. About the time?

A. It was made just before he went to Europe.

Q. How long?

A. I don't know how long; just about that time.

Q. Give us some time?

A. I could not; I never taxed my mind with it.

Q. Was it within a year before he went to Europe?

A. It is a great deal longer that.

393 Q. Don't you know that he put your will in the Safe Deposit Company?

A. I don't know where he put it.

Q. I ask you again don't you know he put your will in the Safe Deposit Company?

A. I don't.

Q. And you never did know?

A. I never did know.

Q. You never made any application to the Safe Deposit Company about that will?

394 A. No, sir.

Q. You never sent anybody then to inquire about it?

A. I never did.

Q. You have given some testimony in regard to securities; I suppose the counsel's object was to prove the value of this property, will you tell me—if I believe right you made the personal securities, evidences of debt of that kind, amount to \$75,000; did I understand you right?

395 A. It is all on paper, I did not charge myself with it at all; I am perfectly willing that you should look at the memorandum again.

Q. [Memorandum was here handed to the witness.] Is that in your handwriting?

A. Yes, sir.

Q. The first item is securities \$75,000; what may I ask you do you mean by securities—what do you mean to include in that word securities amounting to \$75,000?

A. That is sufficient, the paper there; if you want anything further I must turn to my books.

396 Q. I want to know what you mean by securities, when you testify here that the securities amounted to \$75,000?

A. Hand me the paper.

Q. Certainly?

A. I have got the securities lodged safely; you know where they are.

Q. You have got the securities lodged in the Safe Deposit Company?

A. Yes, sir.

Q. I want to know what is the value of the securities

that Carlton owned in his lifetime, and you have said 397  
\$75,000—do you mean that?

A. I mean that.

Q. You mean that he left securities worth \$75,000?

A. Yes, sir.

Q. Tell me what securities they are—are they bonds  
and mortgages or notes?

A. Bonds and mortgages and stocks—banking stocks.

Q. How much banking stocks did he have?

A. Well, sir, that is all put in.

Q. I want to know what it is composed of—how you 398  
arrived at that amount of \$75,000.

A. I don't think it is necessary to tell you; I have  
banking stock in New York city, and banking stock in  
Peekskill and New York.

Q. (*By the SURROGATE*): Are they Carlton's or yours?

A. I gave them to Carlton; I always had the interest.

Q. Were they yours or Carlton's?

A. They are mine; he urged me to give them to him  
as security, but he always made it over to me; all the  
interest that came in, all came into my hands. 399

Q. What do you mean by that—are they his or yours?

A. I gave them to him.

Q. What are these composed of?

A. Bonds, mortgages, and banking stock.

Q. Whose bank stocks?

A. Bank stock in Peekskill.

Q. (*By Mr. LYON*): The Peekskill bank stock  
amounted to how much?

A. I am not positive without going to my books,  
whether it is \$1,000 or \$1,500. 400

Q. How did you make out that \$75,000—how much  
Peekskill bank stock did you include in that?

A. I think there is \$1,000 or 1,500 there.

Q. And the New York bank stock—what bank is it?

A. It is at the corner of Broadway; I can't call names;  
in Broadway near Liberty Street.

Q. The American Exchange Bank?

A. I think that is it; it is a bank in Broadway.

Q. How much does that amount to?

401 A. \$20,000 mine; his father gave him \$7,000 in his own right and I had \$20,000.

Q. You had \$20,000 then, and he had \$7,000.

A. Yes, sir.

Q. Do you count that \$20,000 in these \$75,000.

A. Yes, sir.

Q. What other item goes into that matter; you have testified to the Peekskill bank stock at \$10,000 or 15,000, and you have testified to this and the stock at \$75,000?

A. Well, government stocks you know.

402 Q. Government bonds?

A. Yes, sir.

Q. How many of them?

A. Well, \$75,000.

Q. Why, there was only \$75,000 when we started; you don't mean that?

A. Well, altogether.

Q. (*By the SURROGATE*): How much of that \$75,000 is government bonds?

403 A. I made out the memorandum very quickly this morning, but I can turn to my papers and give you the particulars; my securities are \$75,000 real estate \$35,000, personal property 30,000; that is the last I can tell you.

Q. Well, of those securities you have spoken about the government bonds; tell me about according to the best of your recollection—what do they amount to?

A. I think—there it is.

Q. Do you mean to say there is \$75,000 of government bonds as securities independent?

404 A. I might have bonds and mortgages you know; I take it altogether.

Q. You don't mean to say there is \$75,000 independent of the bank stock?

A. No, I don't think so.

Q. About how much is there?

A. Well, altogether; I made it just altogether; I did not know that you would be so particular; I have got it all home.

Q. Will you bring us at sometime a detailed statement of all the securities you say belong to you?

A. Yes, sir, if it is necessary.

At a subsequent period Mrs. Gates was re-called and testified as follows : 405

*Examined by Mr. VAN PELT :*

Q. Since you were on the stand before, have you informed yourself fully as to the amount and number of the securities that you referred to ?

A. I have ; shall I hand them in and call them over

Q. Call them over, if you please ?

A. \$27,500 in U. S. Government bonds.

Q. Was there a premium on that ?

A. Yes, sir ; but I did not expect to collect the premiums ? 406

Q. There is a premium on them ?

A. I believe so. \$27,000 on the American Exchange Bank ; \$1,500 on the Westchester County Bank ; \$2,500 N. Y. State stock ; \$4,000 bonds and mortgages ; \$400 City stocks.

Q. Next ?

A. \$5,000 cash from Louis Bond ; \$15,000 Fox River Improvement Bonds, making in all \$81,900.

Q. Is this not the premiums on the bank stock— 407  
\$4,500.

A. Yes, sir.

Q. And \$5,500 premium on the Government Bonds ?

A. Yes, sir.

Q. Making \$91,990 in all ?

A. Yes, sir.

Q. You have none of those in your possession ; they were all in Carlton's ?

A. All in Carlton's.

Q. With the \$7,000 given by his father ? 408

A. Yes, sir.

*Cross-examined by Mr. LYON :*

Q. Then that \$27,000 is the one you referred to this morning ?

A. Yes, sir.

Q. What do you mean by \$5,000 cash ?

A. It was paid in very lately in cash, perhaps in June or July ; I suppose some of the banks ; it is very lately paid in.

(Signed) MARTHA GATES.

409 . MARTHA ANN NESBIT, being duly sworn and examined before the Surrogate, in opposition to said will, testified as follows :

Q. You are the daughter of the former witness, Mrs. Nesbit ?

A. I am.

Q. And cousin of Carlton Gates ?

A. I was.

Q. Where have you made your home for many years ?

A. At Carlton Gates.

410 Q. At whose house ?

A. Mrs. Gates.

Q. You knew Carlton, of course, well ?

A. Oh, yes.

Q. You had an opportunity of seeing and knowing him well before he went to Europe ?

A. Oh, yes.

Q. After he returned from Europe the last time, did you have an opportunity of seeing much of him ?

A. Yes, sir ; I was there Winter and Spring.

411 Q. Down to what time ?

A. The first of May.

Q. Did you notice any change in his conduct and manner after his return from Europe ?

A. There was a great change.

Q. Describe it fully, if you please ?

A. Well, he talked and acted strangely ; I saw him throw a knife across the table at his mother on one occasion—the dinner table ; on another occasion, I saw him take a knife and thrust it into her side ; it just touched

412 her dress.

Q. What kind of a knife ?

A. It was a small white-handled knife ; she was getting a glass of water at the time.

Q. What other acts did you see ?

A. And he told me on one occasion when she had gone to New York, that if she ever came on the place again that he would shoot her.

Q. What else ?

A. I have heard him say that if she came on the second

floor he would shoot her; that she must stay down on 413  
the first-floor; he told me to tell her to go to New York,  
on one day—to pack up her trunk and go to New York,  
that he could not get well as long as she was there.

Q. Well, what further?

A. At another time he sent for her to come home, and  
he said that if she didn't come home, that he would send  
a policeman after her to bring her.

Q. What further transpired on the occasion of his  
threatening to shoot his father?

A. I was in the dining-room and heard him knock at the 414  
door and ask who was there, and if his father was home.

Q. What took place?

A. Mother says Mrs. Nesbit said—

[Mr. Lyon objected.]

*Witness*: I heard her tell the Doctor to go out of the  
room.

[Mr. Lyon again objected.]

415

Q. Tell us what transpired in Carlton's presence?

A. He knocked at the door and said, "are you all here  
—is my father here."

Q. What door was it?

A. The basement door; I was in the dining-room, sit-  
ting at the dinner table; all of us were sitting at the  
table.

Q. On what floor is the dining-room?

A. On the first-floor—the south-west room.

416

Q. The first floor above the basement?

A. Yes, sir.

Q. (*By the SURROGATE* :) He knocked at the basement  
door?

A. Yes, sir.

Q. Well, what occurred?

A. The Doctor went into his bed-room, and Mrs. Gates  
locked the door, and I took his hat and coat.

Q. (*By the SURROGATE* :) Was Carlton present?

- 417 A. He was coming up stairs at the time.  
 Q. (*By the SURROGATE:*) State anything that he said or that you saw him doing?  
 A. I did not see him, because I went out of the door on to the piazza.  
 Q. Did you hear him ask where his father was?  
 A. Yes, sir, I did; he asked "are you all here—is my father here."  
 Q. What then took place?  
 A. He came up stairs in the dining-room; I went into  
 418 the parlor; I went into the hall and took his hat and coat and gave it to him on the back piazza, and he went out—left the place.  
 Q. What did Carlton say that he would do to his father?  
 A. I heard him say that he was going to shoot his father.  
 Q. Was that the reason of your taking the Doctor's hat and coat to him, so that he might escape?  
 A. It was.  
 419 Q. Did Carlton have a revolver?  
 A. I was told that he had.  
 Q. Did you see the revolver yourself?  
 A. No, I did not.  
 Q. Where did Carlton then go?  
 A. He went into the dining-room and stayed there.  
 Q. Where did Mrs. Gates go?  
 A. She went into the bed-room and locked the door—and went out and hid herself under the stoop, and I brought her a water-proof cloak.  
 420 Q. Was Carlton's manner violent?  
 A. Very violent.  
 Q. So that you apprehended danger?  
 A. Oh, yes.  
 Q. What else have you seen that was strange and unusual in his conduct, besides the circumstances that you have stated?  
 A. I have seen him shake and knock his mother on the back, up stairs in the hall.  
 Q. Have you heard her scream?

- A. I have heard her scream frequently. 421
- Q. While he was doing this?
- A. Oh, no; not at that time, but many times I have head her scream in the house.
- Q. What was he doing or where was he at the time she screamed?
- A. Well, generally, in the library; he would be in the library with her.
- Q. Do you remember one Sunday afternoon, when Carlton was threatning violence?
- A. He threatened to kill my mother, and so we locked 422 ourselves in Mrs. Gates' bed-room down stairs, and we thought that we would go out of the dressing-room if he came down there.
- Q. Did you hear him make the threat yourself?
- A. No, I did not; I heard Mrs. Gates scream.
- Q. When you say that Carlton, on this Sunday afternoon, threatened to kill your mother, did you hear him make that threat yourself?
- A. No.
- Q. Where were you? 423
- A. In the dressing-room.
- Q. You did not hear him say that he would kill your mother?
- A. No.
- Q. How came you to lock yourself in the room?
- A. Mother heard it, and Hester White heard it; and I felt afraid.
- Q. And you also went with them in this room?
- A. Yes, sir.
- Q. How was Mrs. Gates' conduct towards Carlton? 424
- A. Always very kind—she never opposed him in anything.
- Q. Did she say or do anything to irritate him, or cross him in any way?
- A. Never, in anyway.
- Q. Did your mother or yourself?
- A. Oh, no, sir; never.
- Q. Was his conduct changeable?
- A. Yes, sir—very changeable; sometimes he would be

425 very pleasant, and in half an hour, or an hour, as excited as possible.

Mr. Lyon requested the witness to specify any instance of his changeable conduct.

Q. State how his conduct was towards his mother?

A. Very changeable; sometimes he was very kind, and at other times very violent to her.

Q. What would he say?

426 A. He said that he was going to rule with an iron hand; that was the common expression.

Q. What did he say when he was kind to her?

A. Oh, he said that she must eat beefsteak and drink plenty of wine.

Q. How soon would he change from one mode of treatment to another?

A. Sometimes in half an hour, and sometimes not as often.

Q. Was that changeable conduct repeated all the time daily?

427 A. Every day.

Q. I believe you were not there during his last sickness?

A. I was not there.

*Cross-examined, by Mr. LYON:*

Q. You stated to counsel that he threatened to kill your mother, and you afterwards stated that you had that from your mother—you did not hear it yourself?

428 A. I did not hear him say so, but I heard Mrs. Gates scream, and I heard mother go into the library.

Q. Whose side was this you saw him thrust a knife into?

A. Mrs. Gates', his mother.

Q. When was that?

A. In the Winter.

Q. This last Winter?

A. Yes, sir; at the dinner-table.

Q. Describe the action—how far the knife entered, and what the consequences were?

A. He just touched her dress, at the side—that is all ; 429  
and she left the room immediately ; nothing was said.

Q. He did thrust the knife into her person ?

A. Yes, sir.

Q. How far did it enter ?

A. It just touched her dress.

Q. Was this at the dinner table ?

A. Yes, sir.

Q. What time in the Winter was it ?

A. Some time from January to the first of March.

Q. Nothing had taken place before in the way of con- 430  
versation around ?

A. We were very quiet indeed.

Q. And there was no conversation at the dinner that  
day ?

A. No, sir.

Q. Of either a pleasant or aggravating character ?

A. Nothing at all, as I remember.

Q. Where was his mother sitting, at the head of the  
table ?

A. She had finished her dinner, and had got up to 431  
get a glass of water ; the water was close by her.

Q. And he took the knife and put it out towards her  
dress ?

A. Yes.

Q. Now, then, I want to ask you about the time you  
heard him say he was going to shoot his father—does  
your recollection agree in regard to that transaction with  
your mother's—you heard her testify about it yesterday ?

A. It was last Winter.

Q. You heard her testifying in regard to that transac- 432  
tion yesterday ?

A. Yes, sir.

Q. Does your recollection agree with her statement as  
she made it in Court here ?

A. I only say it happened last Winter—last January.

Q. Your recollection, not of the time, but of the trans-  
action, as she stated it ?

A. Oh, yes.

Q. You agree to her statement of the transaction, as  
she made it yesterday ?

433 A. I don't know anything about that; I have said all that I have to say.

[Mr. VAN PELT objected.]

A. I asked, because it might save time, whether you heard your mother's statement of that transaction yesterday, and whether your recollection agreed with hers about it—you first stated it did, before the interference of your counsel; I will go over the whole thing again, for there is  
434 no doubt about it—where did you hear his voice first?

A. At the basement door.

Q. What did he call out from there.

A. "Are you all here—is my father here."

Q. You were in the dining-room were you?

A. Yes, sir.

Q. Where did you go from the dining-room?

A. I went into the hall and into the parlor, and came back into the hall and took the Doctor's coat and hat and gave it to him on the back piazza.

435] A. When did you next see Doctor Carlton Gates after that?

A. In the course of the evening, before he called, I suppose.

Q. Was it then that he said he was going to shoot his father, when you next saw him?

A. Yes, sir.

Q. And yet you testified that, because he threatened to shoot his father, that you took him out his hat and coat so that he might get away; do you mean to be understood in that way?  
436

A. It was that evening that I heard it.

Q. Of course, it was that evening you heard it?

A. Yes, sir.

Q. Counsel tried to get you to say that you heard his mother scream when she was in the library with him?

A. Well, I have frequently.

Q. When she was with him?

A. Frequently.

Q. Were you in there yourself?

A. I was not.

437

Q. Were you in there at the same time?

A. No; I was not there.

Q. You have heard her scream in the library?

A. I have frequently.

Q. You were not, yourself, present?

A. No.

Q. And all you know about it, is that Mrs. Gates was screaming in the library?

A. I heard her scream.

Q. I want to know whether you were present in the library at the time? 438

A. No, I was not.

Q. This time that he came home when you speak of, that he inquired about his father, what was his condition?

A. I think he was evidently under the influence of liquor slightly.

Q. What is your definition of a person being slightly under the influence of liquor; that violent conduct you saw, was that an indication of it—did he stagger—did he walk unsteadily at all? 439

A. Not that I saw.

Q. From the time that he returned from Europe, has not that been quite a common occurrence with him?

A. I never saw it.

Q. At no time?

A. No.

Q. Have you not noticed a change at times in the man since his return from Europe and before he left—haven't you seen a change in his conduct other than that, before he left for Europe—haven't you testified to that? 440

A. Oh, yes; it was different.

*Re-direct examination, by Mr. VAN PELT:*

Q. Was his conduct different when he was not under the influence of liquor, from what it had been before he went to Europe?

A. Oh, yes; many times.

441 Q. You do not limit his extraordinary conduct, since his return from Europe, to actions when he was under the influence of liquor?

A. No, sir.

Q. Only on this particular occasion, when you apprehended to his father, you discovered that he had been drinking?

A. That is all.

*Re-cross examined by Mr. LYON :*

442 Q. On that occasion had you been in his company for five or six hours before to know whether he had been drinking or not?

A. No, I was not with him in Europe, and he was in New York, back and forth, and so was I.

Q. (*By Mr. VAN PELT*): You could see him when he was around?

A. Yes, sir.

Q. And you were near enough to him to discover whether he had been drinking or not?

443 A. Always; every day.

Q. (*By the SURROGATE*): How often did you see him when you judged that he was under the influence of liquor?

A. Only that once.

Q. He was not a drinking man?

A. No.

Q. (*By the SURROGATE*): How old was Carlton?

A. Forty-one.

Q. Do you recollect when he returned from Europe?

444 A. The 11th of November.

Q. Did he go directly to his house, at Yonkers, that same evening—you were in the house at that time?

A. I was in the city then; his mother was there?

Q. Give me the names of all the persons in the house at that time?

A. His mother was there, and the servants.

Q. No one else?

A. No, sir.

Q. How many servants?

A. Two, I suppose—I don't know I was in the city at 445  
the time.

Q. You were not at home?

A. No, sir, I was in the city.

Q. When did you return?

A. In about ten days.

Q. Then you did not see him at all after he had been  
home ten days?

A. Oh! I was here in New York; I met him there  
once or twice.

Q. How long did his mother remain there at that time? 446

A. Remain where.

Q. At home here?

A. Until after his sickness—three or four days after  
the third of March.

Q. Not your mother—his mother?

A. His mother.

(Signed) MARTHA NISBET.

ESTHER E. WHITE, being sworn and examined before the 447  
SURROGATE, in opposition to said will, testified as  
follows:

*Examined, by Mr. VAN PELT:*

Q. What is your occupation, Miss White?

A. Dressmaker.

Q. Where do you reside?

A. Jersey City.

Q. Did you spend any portion of the time at Doctor  
Gates' house last Spring? 448

A. Eight weeks.

Q. In what capacity were you there?

A. Well, taking charge of the house and seeing to  
Carlton.

Q. To Carlton Gates?

A. Yes, sir.

Q. Nurse, was you?

A. I saw that he had meals, and then we had a man  
at night who took charge of him at night.

449 Q. How much of the time were you with Carlton during the eight weeks you were there?

A. Pretty much all the time.

Q. What were you doing for him?

A. Well, I was seeing to the house and taking care—seeing that he had his meals cooked and everything.

Q. Did you have a good opportunity of hearing and seeing what he said and did?

A. Yes, sir.

Q. How long was he sick at that time?

450 A. Well, I suppose he was about nine or ten weeks sick at that time.

Q. Did you see anything strange or unusual in his conduct at that time?

A. Yes, sir.

Q. What was his conduct then?

A. Well, I think it was very strange at times.

Q. Just tell us what he said and did, from which you infer that his conduct was strange?

451 A. He told me that he thought his mother was a maniac and idiot, and that she was a fit subject for the lunatic asylum.

Q. Was his mother there at the time also?

A. She was not.

Q. What was she doing?

A. She was in New York.

Q. I mean, during these eight weeks?

A. She was going up and down—backwards and forwards—to New York.

Q. What was she doing about Carlton?

452 A. About Carlton.

Q. Yes—had she any charge over him at all, or was she doing anything for him at all?

A. Well, she would buy dainties and have them sent up, such as fruits and birds and such things as that.

Q. Was she attending upon him herself?

A. No, sir.

Q. Did you ever, on any occasion, see her there with Carlton?

A. Yes.

Q. State what you saw transpire between them unusual ? 453

A. Well, at one time I saw him call her before him, he told her to get a chair and sit right opposite him, and stare him right in the eyes ; she got the chair ; he was sitting on the sofa—she got a chair and brought it right opposite him, and looked him in the face and dropped her eyes, and he jumped off the sofa and got hold of her and shook her by the arms.

Q. What did he say to her ?

A. He told her that he wanted her to stare him right in the eyes. 454

Q. What did he do ?

A. Then he was talking to her about having her sent to the asylum.

Q. Tell us all that was said between them—all that you heard ?

A. Yes, at that time.

Q. That was all ?

A. That was all.

Q. What else did you see ?

455

A. Well, I saw him kick his mother.

Q. How many times ?

A. Once.

Q. What else ?

A. At another time ; we usually kept his fire in at nights, and Mrs. Gates came in the morning to see to his fire—to put new coals on—and Carlton asked who was there—who was troubling his fire ; and Mrs. Gates replied : “ It is I, Carlton ; ” he said, she did not know anything about his fire, that she was a perfect fool and idiot, and, if she did not leave his room in five minutes, that he would shoot her. 456

Q. Did she go ?

A. She went right away ; she said she was going right away, and she went right away.

Q. Were you present when he called this new girl, from New York, to his room ?

A. I was present.

Q. Did you hear it ?

457 A. I heard it.

Q. State what you heard ?

A. He rang the bell ; you want me to tell about the girl.

Q. All that you heard ?

A. Well, Mrs. Gates brought this girl on Friday evening ; on the following Saturday morning he rang the bell ; the girl came up and she opened the door, and he said : " Come in ; " he spoke very sharply, indeed, and the girl was frightened ; she said : " No, sir, I won't come in ; " 458 he says : " Come in, I ain't going to hurt you ; " she said : " No, sir ; " and with that she ran down stairs ; he was very much enraged, indeed ; he called for his mother to come, and his mother came, and he had the library door shut after his mother came in, and he took hold of his mother.

[Mr. Lyon objected.]

459 *Witness* : His mother screamed, and Mrs. Nesbit was waiting in the hall, and when she heard Mrs. Gates scream, she opened the door and went right in ; then he let go.

[Mr. Lyon objected ; and asked the witness whether she went in the room also.]

*Witness* : I went in afterwards.

Q. Where did you stand ?

A. In the hall.

Q. Tell us what you saw and heard ?

460 A. Mrs. Nesbit went in when she heard Mrs. Gates scream, and I followed in after Mrs. Nesbit, and he let go his mother and got hold of Mrs. Nesbit and shook her very severely, indeed—very hard ; when I went in, Mrs. Nesbit was almost exhausted ; and he let go Mrs. Nesbit and shook his hand right in Mrs. Nesbit's face, and he said : " You have been trying to exterminate me, be careful, or I shall exterminate you."

Q. What did you hear Carlton say, if anything, as to his mother being insane ?

A. He told me that he thought his mother was insane 461  
—a perfect maniac ; he said, he was afraid to be in the house with her, for there was no telling what she might do in the night time, when we were all asleep, and that he did not consider himself safe in the house with her.

Q. What did he say about a keeper for her ?

A. He told me that he thought he would have her put in the lunatic asylum, two weeks from that time, and asked me whether I could testify to that effect—that his mother was insane ; I told him that I could not ; and he told me that he had some of his most intimate friends 462 who would testify that his mother was insane ; and he said that Dr. Wood was using means to have his mother put in the asylum in New York ; I said that it was a dreadful thing, for it would surely drive Mrs. Gates crazy if she was in the asylum ; he said : “ How you talk ; she will have everything nicely there ; her room will be just as nice as the parlor down stairs, only it will be much better for her to be there.”

Q. What did you hear about having a keeper for her ?

A. That was at another time ; he said that he thought 463 about having his mother brought home and confined to one room, and having a keeper—a very strict person to take charge of her ; and if she walked out on the place, this person should accompany her on the place ; that it should be a very strict person, who should whip her if she needed whipping.

Q. What else—tell the rest ?

A. Well, at another time he said, that he did not know that his mother had come up from New York ; and he found her on the place, and he did not know that she was 464 there ; I did not tell him that she was there ; he was very much enraged when he found she was there, and went on dreadfully ; he said that she was a fool ; that she was a lunatic, and said as how she deserved to be stripped and lashed severely.

Q. What was his mother's conduct towards him ?

A. Very kind.

Q. During all this time ?

A. Very kind.

465 Q. What further acts of violence have you seen or heard on Carlton's part towards his mother, his father, or Mrs. Nesbit—any that you have not mentioned?

A. Well, he told me—Carlton Gates told me—that he thought Mrs. Nesbit poisoned him, or William Nesbit.

Q. Who was William Nesbit?

A. William Nesbit—that was Mrs. Nesbit's son.

Q. His cousin?

A. Yes; his cousin.

Q. What else?

466 A. He told me that those papers that were missing, he thought that Mrs. Nesbit had taken them, or William.

Q. What papers did he say they were?

A. The first package of papers that he lost, related to some goods that were coming from Europe.

Q. What else?

A. The other package was business concerning Mrs. Nesbit.

Q. Describe when that took place—on a Sunday?

A. That was the Sunday following—after he got hold  
467 of Mrs. Nesbit and his mother.

Q. Tell us how that happened?

A. He had sent a note to Mrs. Nesbit by me, to give to Mrs. Nesbit, and it was very abusive indeed.

Q. No matter about that, tell us what you saw and heard?

A. Mrs. Nesbit was very much afraid—frightened—and we all went down to Mrs. Gates room and locked ourselves up there—Mrs. Nesbit and her daughter; they eat dinner with their cloaks and hats on and furs; they were  
468 afraid to stay in the house; Mrs. Gates dressing-room opened out on the piazza.

[Mr. Lyon objected.]

Mr. VAN PELT: I desire to show by this witness, that Carlton's conduct was so violent and threatening, that it had the effects on Mrs. Nesbit to be prepared to leave the house.

*The SURROGATE*: That is not evidence.

Q. Tell us what his conduct was--what did he say, and how did he act? 469

Mr. LYON: On that occasion?

A. He told me that he wanted Mrs. Nesbit and her daughter to leave the house.

Q. What else did he say about that--what did he say about doing an injury, or anything to that effect?

A. He said so much; he said he would feel happy again--like another man--when the Nesbits would leave the house. 470

Q. How was his manner--violent or mild?

A. Very much so indeed; on that Sunday very violent.

Q. Tell us what he did that showed you that he was very violent--what did he do--how did he act?

A. Well, he had some beefsteak brought up, and it did not exactly suit him, and he threw dish and all out of the window.

Q. What else did he do on that occasion that you thought was violent and unusual? 471

A. I cannot think.

Q. Did he speak loud or low?

A. Very loud indeed, and very cross; very shrill indeed.

Q. Did you hear him use any profane language?

A. Yes, sir.

Q. Was he in the habit of using profane language?

A. No, at times.

Q. State how his general conduct was towards his mother--as to whether it was the same always? 472

A. No, it was not always the same.

Q. How did it vary?

A. It varied so, that sometimes, if he wanted anything, and his mother was by him, he thought that nobody was capable of doing it but his mother; whenever he wanted medicines, or anything of that kind, he always had his mother get them for him.

Q. Did he take medicine from anybody else?

A. Yes; but she always got the medicines for him.

Q. Did he desire her to get them for him?

473 A. Yes, sir.

Q. What did he say to his mother about arranging the furniture, and pictures, &c.

A. He told her that he was going to right all the things in the house, in the parlor, pictures and one thing or another, and asked her about it—in what way he would arrange the pictures and things.

Q. What did he say to her when she told?

A. He said he thought well of that; he asked her opinion and followed it.

474 Q. He asked her opinion?

A. Yes, sir.

Q. How soon would he change his conduct to his mother from one extreme to another.

A. Sometimes in half an hour, and sometimes in an hour.

Q. Could you tell when he was going to change?

A. No, I could not tell.

Q. Was it a sudden outburst?

A. Very sudden outburst.

475 Q. Without any notice?

A. Without any notice whatever.

*Cross-examined, by Mr. LYONS:*

Q. When did you go to that house?

A. I think on the sixth of March.

Q. Of this present year?

A. This Spring.

Q. When did you leave?

A. I left, I think, it was the 7th or 8th of May, or the  
476 9th probably.

Q. What was the state of his health when you went there?

A. Well, he was very sick—very much emaciated.

Q. Was anybody attending him—any physician?

A. Dr. Upham.

Q. How long did he continue to attend him while you were there?

A. While I was there—all the time.

Q. So that he was under medical charge during all that occasion?

- A. During all this occasion that I was present. 477
- Q. Did you set up with him at nights?
- A. No, they had a man.
- Q. He had a man who, during that time, sat up with him at nights?
- A. In the hall.
- Q. Who was it?
- A. His name was Patrick.
- Q. After you came there how long was it before his mother left the house?
- A. His mother was not there when I got there. 478
- Q. Did she ever live in the house while you were there?
- A. While I was there during the eight weeks.
- Q. Did she live in the house during that time?
- A. Well, at times she would come up—do you mean any particular length of time.
- Q. Yes; did she make the house her home during that time?
- A. No, her home was mostly in New York during that time.
- Q. Will you tell me the occasion you saw him kick her—describe that whole thing—when was it? 469
- A. I suppose it must have been in the latter part of March.
- Q. Was he confined to his bed at that time?
- A. No, sir.
- Q. Where did this scene take place?
- A. In the library.
- Q. Were you present?
- A. I was.
- Q. Just state what took place—what the mother said, and what he said, and what was done? 480
- A. I was not there during the whole of the time, because I just had gone into the library, and they were talking; I think it was on money matters; I was not sure, but Carlton he said something or other, and wanted Mrs. Gates to say whether it was or was not—something to that effect; and I saw him kick her.
- Q. How did he do it?
- A. He took his foot up and kicked her; Mrs. Gates got up and went from him.

481 Q. He wanted her to say something in regard to money matters, and she declined to say it?

A. Well, I believe she did.

Q. At that time did you administer any medicines to him?

A. I never did.

Q. You never administered any medicines to him?

A. No, sir.

Q. Did you ever prepare any?

A. No, sir.

482 Q. Who did administer then to him?

A. He generally administered them himself.

Q. Do you know what kind of medicines he had?

A. Quinine—he used that very freely.

Q. Didn't he take anything else?

A. He had some other kind of medicines; I don't know what they were.

Q. Were there no stimulants used?

A. Yes, sir, punch—milk punch I believe it was—I don't know what it was—milk punch I believe it was.

483 Q. Stimulants in any other form except punch?

A. Well, he had champagne.

Q. That was during the whole time of his sickness?

A. He did not use it during the whole time of his sickness; occasionally.

Q. Only occasionally used it?

A. Yes, sir.

Q. Where is your residence?

A. Jersey City.

Q. Can you give me your number in Jersey City?

484 A. 247 South Third Street.

Q. Had you ever lived there before?

A. Lived where.

Q. At Mr. Gates?

A. Yes, sir.

Q. You had lived there before that?

A. Oh! yes.

Q. How long before?

A. About ten years ago, I suppose; I had been visiting the family frequently since that time.

Q. After that time, and up to the time of his death, 485  
did you see him again?

A. I have not seen him.

*Re-direct examined, by Mr. VAN PELT:*

Q. Did Carlton act in that strange way when he did  
not take stimulants?

A. Oh! yes.

Q. As much so as when he did?

A. Just as much so.

Q. Did you know Carlton ten years ago? 486

A. I did.

Q. State how his conduct, during the time you were  
there in March and April, compared with his conduct  
when you knew him before?

[Mr. Lyon objected.]

Q. What was his conduct ten years ago?

A. Why, it was very different towards his mother; it  
was very different in respect to the treatment towards 487  
mother; it was very kind when I was there before.

Q. Did you see any such explosions of violence?

A. No, not never.

Q. Nothing of that kind took place?

A. Nothing of that kind whatever.

Q. And her conduct to him, then, was how?

A. Very kind.

A. Was that the same, then, as during your last visit?

Q. Just the same; I did not see any change.

(Signed) ESTHER E. WHITE.

488 Dr CHARLES A. LEE, being duly sworn and examined before the Surrogate, in opposition to said will, testifies as follows :

*Examined by Mr. VAN PELT :*

Q. Where do you reside ?

A. I live now at Peekskill.

Q. What is your profession ?

A. I am a physician.

Q. How long have you practised as a physician ?

489 A. I have practised medicine since 1828.

Q. What is your age ?

A. I am sixty-seven.

Q. And have you made any branch of medicine or disease a special object of study ?

A. Well, I have lectured at different schools, on different subjects ; I lectured on medical jurisprudence in three or four medical colleges, and perhaps, I may say here, that I have made it a special study—medical jurisprudence.

490 Q. Have you made the disease of insanity a subject ?

A. Yes, sir.

Q. Have you delivered lectures upon it ?

A. Yes, sir.

Q. And written articles upon it ?

A. Yes, sir.

Q. And treated patients ?

A. Yes, sir.

Q. Are you acquainted with the late Carlton Gates ?

A. Very intimately.

491 Q. When did you first know him—state the extent of your acquaintance and your opportunity of knowing him ?

A. Well, when he was in the University of New York, he lived a year in my family, during which time I got intimately acquainted with him of course.

Q. How long ago was that ?

A. Well, I think it was in 1847 or 1848 ; I am not certain ; I have not looked at the date, but it was along about that time.

Q. And you then had an opportunity of becoming well acquainted with him ?

A. Yes, sir, and since that I have been intimate with 492  
him, constantly visiting him, and he me, back and forth.

Q. When did you see him last alive?

A. I saw him just before he went to Europe; the last  
time between two and three years ago.

Q. How frequently had you seen him before that, and  
for the last ten years?

A. Every few days; he would come up and spend  
several days at my house, and I would visit him; my  
boys were intimate with him.

Q. What was his natural disposition towards his 493  
mother, as you gathered from acquaintance with him?

A. He naturally had a very kind and amiable dispo-  
sition; I recollect I had a son who was sick most of the  
time; he was at my house and he watched with him,  
and was very affectionate—more so than usual.

Q. When was that?

A. In 1848 I think.

Q. Did you ever hear him speak of his mother?

A. Yes, sir, often.

Q. What was the state of feeling on his part towards 494  
his mother, as indicated by reference to his mother.

A. Well, it was the kindest feeling; he never showed  
any other; he had a very kind feeling towards his mother.

Q. Did he ever practice medicine himself?

A. No, sir, he never practised; I know his mother used  
to visit him at my house, and he always treated her very  
kindly—always spoke of her kindly.

Q. Did he ever speak of any particular matters between  
them, showing how he felt towards her, and what reason  
he had to feel so? 495

A. No, sir; not in particular.

Q. When did you see him last?

A. Well, I stated just before this.

Q. I mean before he died?

A. I saw his remains on Sunday; he died on Saturday;  
I went down to see him; I had heard that he was very  
sick; his mother told Mrs. Lee that he was very sick  
and told me, and I intended to go sooner, but I did not  
get down until the Sunday after he died; he died on  
Saturday, and I found him lying dead in the house.

496 Q. Had he written you—had he sent you any request to come and see him?

A. Yes, sir; he had written several times for me to visit him; that was just after he returned from Europe.

Q. Did he visit you?

A. Oh, yes.

Q. Since he returned from Europe?

A. No, sir; not since.

Q. Have you heard the testimony of the several witnesses as to the conduct of Carlton Gates?

497 A. Yes, sir.

Q. And the conversation of Carlton Gates?

A. Yes, sir; I have heard it.

Q. From what you have heard detailed in reference to his conduct, to what do you attribute the conduct ascribed?

[Objected to; overruled; and exception.]

A. Well, I have no question in my mind that it was insanity; I cannot account for it in any other way.

498 Q. I understand you to say that you can account for his conduct on no other hypothesis than insanity?

A. No, sir; I cannot.

Q. Who did you see, Doctor, when you first went to the house after Carlton was dead?

A. I saw Mrs. Gates and Mrs. Nesbit.

Q. Who else?

A. After that, I saw the gentleman who was introduced to me; it was the first time I had ever seen him—the  
499 Rev. Doctor Hulbert.

Q. Did you have a conversation with Doctor Hulbert in reference to Carlton?

A. Yes, sir; a long conversation with him.

Q. In reference to his supposed insanity?

A. Yes, sir.

Q. State what that was briefly?

A. I told him, after talking something about his will, that the family believed—considered Carlton insane; “No,” said he, “his mind was never stronger than it has

been during his sickness ; if any body is insane it is Mrs. 500  
Gates, and I believe she is insane."

Q. His mother ?

A. Yes, sir.

Q. Referring to his mother ?

A. Yes, sir.

Q. Did you have a further conversation with Dr. Hulbert, shortly after that, in reference to his attendance upon Carlton ?

A. I stated to him that I was very glad to know that Carlton had called in a clergyman, and was gratified to 501  
know that he visited him—I suppose for spiritual advice ; he remarked that, " Oh, no," says he, " Carlton " never opened the subject to me, or I to him ; I think I expressed some surprise at it, that it did not constitute a subject of conversation between them at all.

Q. What remark did you make ?

A. Well, I am not certain ; I would not certainly say that I made any comment upon that—I may and I may not.

(Signed) CHARLES A. LEE, M.D. 502

GEORGE B. UPHAM, being duly sworn and examined before the Surrogate in opposition to said will, testified as follows :

*Examined by Mr. MORRIS.*

Q. Where do you reside ?

A. I reside in Yonkers.

Q. How long have you resided here ? 503

A. Sixteen years, the first of June last.

Q. How long have you known Carlton Gates ?

A. I have known him——

Q. Personally ?

A. I knew him, personally, for about eight weeks.

Q. Were you intimately acquainted with him ?

A. No, sir ; not intimately acquainted with him, only the time that I was his attending physician ; I attended him, as his physician, from about the 1st of March, to the 30th of April.

504 Q. The 1st of March, 1869 ?

A. Yes, sir.

Q. That is, last March and April ?

A. Yes, sir.

Q. Were you called then by Carlton Gates to attend him ?

A. Yes, sir.

Q. What day were you called ?

A. On the 1st of March.

Q. We would like to have you state your experience of  
505 the condition of that man when you found him, and all you know about his case from that time ?

A. I was called to see him on the 1st of March, and I waited upon him early in the morning, about eight o'clock ; when I first saw him he stated to me, then, that the day previous he had been to New York, and in getting from the cars, which were very warm, he felt his person suddenly chilled by a cold wind, and he said that he felt weak, faint and exhausted—so much so, that it was quite impossible for him to walk home,  
506 and he was obliged to get into a carriage ; when he reached home he immediately retired to bed, and felt so ill that he could not stay up, and told me that he had passed a very uncomfortable night, suffering a good deal of distress in the region of his lung—I think, if my memory serves me right, it was his right lung—I don't know that that is of any consequence ; I found him at that time a good deal excited, with a good deal of nervousness and restlessness, throwing himself about from one side to the other of the bed ; he had a good  
507 deal of fever, a good deal of headache, and he had a severe pain over the region of the lung, which, upon examination, I found giving unmistakable evidence of inflammation.

Q. How long did you stay the first time you were called ?

A. I think I stayed an hour with him ; the case at that time was a little obscure, because it was with great difficulty I could get at anything like a particular statement from him as regarded the condition of his body.

Q. How sick was he at that time—able to sit up 508  
any?

A. No, sir; he was not able to sit up, he had a very rapid pulse, a good deal of fever, dry tongue, and decided inflammation of the lung, so that he was unable to sit up.

Q. When were you called the next time, or when did you visit him the next time?

A. I visited him again on the evening of the same day—about six o'clock in the evening.

Q. How did you find him then?

A. I found him a little more comfortable—at least, 509  
there was not as much nervousness and restlessness—but he still complained of a good deal of pain over the region of the lung.

Q. Did you visit him again on the next day?

A. Yes, sir; I visited him the next morning, at eight o'clock.

Q. What was his condition then?

A. There was a decided improvement.

Q. Was he able to sit up?

A. No, sir.

510

Q. How long before you noticed any unnatural things?

A. Unnatural things as to what—his body.

Q. In regard to his conduct?

A. I noticed his conversation was a little peculiar on the third morning.

Q. State, if you please, what the conversation, that morning, was about?

A. Before I went out to visit him that morning he addressed me a note, in which he said that I had entirely mistaken the diagnosis of his disease, and that he would 511  
like to see me directly; I waited upon him, and he then said that he was very sorry to differ from me, but that I had made a very grave mistake, not only in making out the cause of his illness, but also in the treatment; I told him I was very sorry, indeed, I had made such a mistake, and, if I had, it was important for me to be corrected, and I should like to be corrected; I asked him what his diagnosis of the case was, and he told me, that, without any sort of doubt, it was a case of poisoning.

512 Q. Did he give you any sort of idea when or by whom he had been poisoned ?

A. No, sir ; I asked him by whom he had been poisoned, and where and how, and with what poison, and he seemed to be entirely ignorant in regard to the matter ; he could not tell me.

Q. How long did you stay with him this time ?

A. I think I remained with him about two hours.

Q. Was the conversation, that time, nearly all occupied in regard to the poisoning, or were there other things  
513 said ?

A. Well, it was occupied pretty much all that time, if my memory serves me right, in discussing this matter of poisoning.

Q. How was it settled, or was it settled ?

A. I think it was, when I left ; at any rate, he told me to go on with my treatment, and to treat him as I had been doing, and to treat him for the disease—that is, pneumonia—inflammation of the lungs.

Q. Did he make any expression in regard to any  
514 members of the family that day ?

A. No, sir.

Q. Did he say anything in regard to his mother ?

A. No, sir.

Q. When was the next time you called upon him ?

A. I called upon him again in the evening.

Q. How did you find him, in regard to his views of poisoning, then—did he speak of it ?

A. No, sir ; there was nothing said.

Q. How long after this was it that he made remarks as  
515 to his mother ?

A. About three weeks.

Q. What were his remarks then—what statement did he make in regard to his mother—give it, as near as you can, word for word, if you please ?

A. He said to me, that he never should get well—be able to recover—so long as his mother persisted in annoying him in the way in which she did ; or (he didn't say "his mother" at that time, he said "that woman") : "Just so long as that woman persists in annoying me I never shall recover from this attack."

Q. Did he describe that woman so that you understood it to be his mother ? 510

A. He told me afterwards that it was his mother ; she constantly annoyed him in different ways—particularly, in deranging his household matters ; discharging the servants.

Q. State some of the annoyances that he alleged his mother guilty of ?

A. He said she was constantly in the habit of going into the kitchen and interfering with the domestics—hiding the tea and sugar ; interfering with them generally in those matters. 517

Q. Did he say anything to you about his mother being insane ?

A. No, sir.

Q. What did you conclude in regard to the sanity or insanity of Carlton at that time—what is your opinion ?

[Objected to ; objection overruled ; exception.]

A. Well, I was inclined to believe, from his statement to me in regard to his poisoning, and this matter of his mother's conduct, that it was a case—more a case of delusion than of positive insanity ; insanity did not really occur to me at that time, that is, positive insanity ; I stated to him at the time, that I thought he was wrong in regard to his mother, and gave him my reasons. 518

Q. How long after the period of his sickness were you called in again to see him—immediately after he had got better ?

A. After he had convalesced ? 519

Q. Yes, sir.

A. I think it was ; I think in about two weeks I was called in to see him.

Q. What was the nature of that visit ?

A. I was not called then in a professional way ; I was called for non-professionally.

Q. Give us an account of that ?

A. During his convalescence he remarked to me, that, if ever he got well, as he hoped he would, he should be

520 pleased to see me some evening, and pass a pleasant evening with me ; that he would like to give me a statement or history of his life ; I told him I should be pleased to call upon him and pass an evening with him ; he then remarked : " If you will," says he, " we will pass such a night as you never passed before " ; in about two weeks after he had convalesced, his mother addressed me a note, saying she would like to see me as quick as possible ; supposing he was ill again, I went up to see him, and very much to my surprise, I found him sitting at the

521 table, prepared to have dinner ; after ordering his mother out of the room, he then closed the door, and locked the door, and putting the key in his pocket, sat down in a chair, and said he : " Do you remember what I said to you at one time about passing an evening with me ? " I told him " yes ; " " Well," he said, " he had made preparations to pass such a night, and it should be such a night as I never passed before ; " I told him I was not prepared then, to pass the night or the evening with him ; that I had an engagement ; that it was impossible

522 for me to do so, and that I should have to go back to my office ; he told me not to be in a hurry ; I told him that he must excuse me ; that it was impossible for me to remain ; he said, I should remain, whereupon I told him I should not remain ; he wanted to know how I could help myself ; I told him I would try ; he told me he would like to see me get out of the room ; I told him I would give him two minutes to open the door.

Q. Had he the door locked ?

A. Yes, sir ; he said I should not open it ; I waited,

523 and told him one minute had expired, and I would give him sixty seconds more, whereupon he got up and took the key out of his pocket and opened the door, and told me to be gone ; in great disgust I took my departure, and I have not seen him from that day to this.

Q. Did he say anything to you at any time, during this sickness, about his mother going to a lunatic asylum ?

A. No, sir.

Q. What did Carlton say to you about his exalted character during this last interview ?

A. About what?

524

Q. About his own character, his exalted character, his learning?

A. Oh, at the time he proposed to give the dinner, he said that he was unquestionably one of the greatest men in the county, that is, the most learned man; that he had the most general information; that he had travelled a good deal; had met with a great many distinguished individuals while abroad, and had seen a good deal of the world.

[The cross-examination of this witness was postponed.] 525

(Signed) GEO. B. UPHAM, M.D.

AMOS W. GATES, M. D., being sworn and examined before the SURROGATE, in opposition to said will, testified as follows:

*Examined by Mr. VAN PELT.*

Q. You are the father of Carlton Gates?

A. I am.

527

Q. When did you last see him alive?

A. In July.

Q. Of the present year?

A. Yes, sir; last July.

Q. Where?

A. At Yonkers; at the place.

Q. At your homestead?

A. Yes, sir.

Q. How long have you resided in Yonkers?

A. Forty-five years.

528

Q. Your profession—what is your profession?

A. Physician.

Q. How long have you practised?

A. Well, I have practised all the forty-five years; except the last three or four I have done very little or nothing.

Q. Where have you spent your time mostly during that time?

A. The last few years—

Q. Yes; since you stopped practising?

528 A. More in Ohio than anywhere else.

Q. What portion of the time did you spend at the homestead during the last four or five years?

A. Well, when Carlton was not at home I would frequently come home four times a year and spend three or four weeks; when he was at home, I spent very little time there.

Q. Carlton had gone through a collegiate course?

A. Yes, sir; he graduated at the University of New York, his academical degree; and he took his medical  
529 degree in the same institution.

Q. What was his age?

A. Forty-one years, when he died, and seven days.

Q. Did Carlton ever practise medicine?

A. Never.

Q. Did he ever follow any business for a livelihood?

A. None.

Q. What was the occasion of your leaving your homestead and suspending your practice?

A. Family difficulties emanating from him.

530 Q. Will you state the circumstances that transpired between Dr. Carlton Gates and yourself that led to your leaving the house, in view of the question of insanity?

[Mr. Lyon objected; objection overruled; exception.]

A. In view of the question of insanity, difficulties grew up and went on to that extent that I was unable to sustain the family; under these circumstances I was obliged to make arrangements of some kind to prevent the entire destruction of the family property—of my property;  
531 he had a good while before got a good deal of undue control over me, and I must say, that I think a good deal of it, through the indulgence of his mother; and it went on; he was in Europe spending more money than we could afford—a good deal; he never had any, and was always, by adroit management, managing my affairs through his mother in such a way that I could not get on; the only way that I saw that I could get out of it was to make arrangements for the comfortable support

of Mrs. Gates, and take enough to support me, and go 532  
away, which I did.

Q. When did you first discover in him anything that  
struck you as strange or extraordinary?

A. It is a long time ago.

Q. Mention the time and circumstances?

A. Fourteen or fifteen years.

Q. What were the circumstances?

A. Well, the first thing that I noticed which appeared  
to me as the act of a monomaniac, was a letter written to  
us from him in New York, which was, I think, about fifteen 533  
years ago; it was several years after he had graduated; I  
had arranged to give him, after ineffectually trying to get  
him to go into business, and do something; I told him  
that I would give him \$1,200 a year for his support—  
that he must live on that; he was then in the receipt of  
that, and he had purchased some furniture, something of  
that kind, had incurred a debt, I don't know how much  
it was, I don't remember; he wrote up a letter.

Mr. LYON: You have got the letter, I suppose, there? 534

A. I have.

Mr. LYON: You had better produce the letter?

[Witness handed a letter to his counsel.]

Mr. LYON: Does the counsel introduce the letter?

Mr. VAN PELT: Yes, sir. 535

Q. That is the letter you referred to, then?

A. Yes, sir.

[The letter, dated Feb. 1st, 1854, was offered in evi-  
dence, and marked Contestant's Exhibit "D."]

Q. What was the next development that you discov-  
ered in the way of monomania?

536 A. Well, I think, for years, perhaps, for the next succeeding five years, I saw nothing excepting a continuance the same thing—urgent demands for money more and more.

Q. What mode did he adopt to obtain money.

A. Well, in one instance, I think it was nine years ago, I was going to Chicago, and was going to start in the morning for the West, and he came in the night after I had been in bed, and I suppose asleep; he did not go to bed as early as we did; he was dressed—he came to  
 537 our room; we had been in the habit—even before that, locking the doors, between him and us, when we slept; he came to the door and made a racket there, and it was locked, and he could not get in, and he went round to the dressing-room door on the piazza, and that was locked, and he could not get in there, and he took, I think, a billet of wood, I cannot tell now what it was, and he burst in the door, staving off the casings which the lock was fastened to opened the door, and came in; by this time I had got out of bed; Mrs. Gates had  
 538 covered up her head under the clothes; he took me by the collar of my night-shirt and held me there some time, making very violent expressions, and saying that I should not go away without making a suitable provision for him to live like a gentleman, until I got back—that he had not money enough; I told him that he had his \$1,200 a year, which was as much as I could afford to give him; he said that he meant to have money enough to live like a gentleman, and that I could not leave for Chicago until I gave him some money; when I found  
 539 that I could not get free of him, I promised to give him \$300, which I did, and he let me go, and I went on my journey.

Q. What was the next fact that way?

A. Well, it would be very difficult for me to recollect one in ten of the outrages.

Q. Were there many of that nature?

*The SURROGATE:* Let him state what they were.

A. Well, I was assailed in a similar way many times.

Q. Go on and state all that you can recollect, and I 540  
will not interrupt you until you get through ?

A. Well, similar acts, making it necessary for me to  
make the arrangements which I spoke of a few minutes  
ago, and to go away—leave the place.

Q. State all you can recollect of the acts of his, similar  
to the one you have described ?

*The SUREGATE:* State all his acts in reference to insanity.

A. Well, one was—I had made a will in which 541  
I made provision for Mrs. Gates, and gave him the  
use of the balance of the property and the principal  
to his heirs or his issue if he left any ; he found  
out what that will was and made so much of a time  
about that, that I was obliged to tear it up ; after he found  
that will was gone, he then went to New York and  
got a quit-claim deed made out for that place, deeding it  
to him, and then came to me in my room and would not  
let me go out—kept me there—stating that I had once  
made a detestable will, and he had got rid of that ; “ Now,” 542  
says he, “ You shall never make another, understand me,  
you shall never make another will ; you shall go and sign  
that deed ; I shall not live in the condition I have done  
heretofore, never, no, sir &c. ; you hold the property, I  
must have a fee simple, for if you should make another  
will, or if you go away now, you will put it in as bad a  
position as you had it before ;” he told me that I should  
not go away—I should not escape him ; that he would  
follow me to the ends of the earth ; as to making another  
will, that would be out of the question ; well, I thought 543  
over it a few minutes ; I was in a critical position ; I be-  
lieved that he was armed, and he was very angry, or  
seemed so ; I finally told him that I thought I would sign  
the deed ; I did not sleep that night ; I reflected upon  
the thing until morning ; I thought, perhaps, I had  
better have him taken up—taken care of ; then I believed  
that they could not keep possession of him ; that he  
would get out, and that if he got out, under the irritat-

544 ing circumstances, I thought I had good reason to suppose that he would murder me, so I went next day and signed the deed ; that was another case ; since the trust arrangement has been made, I don't know that he has, in express terms, threatened my life ; within the last year, since he returned from Europe, his actions in the house have been such that I dare not remain there ; I went there after he came back, and found that he seemed to be not only a monomaniac, but appeared to be generally insane, and his antipathy against me had been so much  
 545 always, that I felt entirely unsafe in the house, and kept away. I have been back twice since that to the house ; once I stayed one night or two, I don't remember which ; I went away the next morning and took away my trunk ; some old clothes that I had in the house and some things, I took them away.

On motion, ordered that all further proceedings be, and the same are hereby adjourned to the 15th day of October, 1869, at 10 o'clock a.m., at the Surrogate's office, in White Plains.

546

JOHN W. MILLS,  
*Surrogate.*

1869, Oct. 15th.—Met pursuant to adjournment, and by consent of all parties, it is ordered that all further proceedings be, and the same are adjourned to the 22d day of October, 1869, at 10 o'clock A. M.

JOHN W. MILLS,  
*Surrogate.*

547 1869, Oct. 22d.—Met pursuant to adjournment.

Present—Mr. LYON, Mr. ROMER and Mr. PRIME, for *proponents*.

Mr. VAN PELT and Mr. NORRIS, for *contestants*.

The further examination of AMOS W. GATES, M. D., was proceeded with by Mr. VAN PELT, as follows :

Q. Doctor, will you please resume your statement in regard to your son's conduct ?

A. Well, I believe I had gone through with the most 518  
of it up to the time of his return from Europe the last  
time.

Q. How soon after his return did you see him ?

A. I saw him in December.

Q. Of last year ?

A. Yes, sir.

Q. What condition did you find him in then ?

A. Well, the main difference I saw in him, was that his  
physical health was not as good as when he left, and his  
mental capacity seemed to be a good deal more de- 549  
ranged.

Q. Describe fully, if you please, the alteration ?

Mr. LYON objected to the witness testifying from a  
written memorandum, which he held in his hand and re-  
ferred to.

Q. That is a short memorandum that you desire to tes-  
tify upon ?

A. Just a head of the different points. 550

Q. Go on and state fully the condition of your son  
as to bodily health and his mental state ?

A. I say that he was not physically as strong as I had  
known him before, and his mental condition was consid-  
erably worse ; his derangement appeared to me until his  
last return from Europe a monomaniac affection—after  
his return from Exrope it was extended.

Q. On what subjects was he a monomaniac before he  
went to Europe ?

A. Well, the main thing was the making use of all 551  
possible means to acquire funds—money—and to lay it  
out in many things that were neither useful to him or  
anybody else ; that was carried to such an extent, that I  
think no sane man would have carried it ; one thing after  
his return, his countenance, which has been previously  
noticed here as being very peculiar—the peculiarity was  
very much aggravated ; I was at home about a month at  
that time, or within a few days of a month, and while I  
saw him, that expression of countenance was very much

552 more marked and more continued than before ; it is a little difficult to describe such a countenance, but it was extreme anxiety, in many instances amounting to anguish ; I don't know but that will describe that part of it as well as any, and his eyes had that peculiar expression of mania, not entirely a vacant stare, or a stare of full intelligence—a strong, intense look ; another point, after his return he dwelt a good deal upon poverty—being poor—which I had never known before ; complained of no money to pay counsel, no money to pay the ordinary

553 expenses—dwelt a good deal upon that ; another peculiarity I noticed that I had not noticed before, I may mention, that while I was at home (I was there near a month), I made it a study to understand him as far as I could ; I discovered those peculiarities I have mentioned and I discovered some others ; he was constantly afraid of being shot ; when he came down stairs where we were sitting, if the lamps or gas was lit, and any of the windows, the inside shutters were not closed, he would immediately go to them and close them, with some hasty

554 observation that we offered premiums for being shot through the window—something to that effect ; that he repeatedly did, and then was the first I discovered at all of his being afraid of being poisoned, and then it was quite in an incipient state ; as far as I discovered, he did not attribute being poisoned—his fear of being poisoned—to any individual, but if he came into the room to take a meal, and his coffee was poured out, he would not drink it, he would put it out ; he habitually did that ; I never saw him take

555 a cup of coffee that was poured into his cup before he came to the table ; on one occasion, he observed that that was poisoned stuff, and threw it into the slop-bowl ; what he meant by that I don't know ; he was in the habit of walking on the piazza ; he had been in the habit of walking on the piazza, before he went to Europe, a great deal—took much of his exercise in that way ; after his meal he would go on the piazza and walk, which he usually did ; he did this oftener before he went to Europe than he did after his return ; after his return from

Europe it was very observable that it was different; 556  
 he was hurried, excited, flurried; he would walk back  
 and forth with his cigar, gesticulating, sometimes fiercely,  
 and frequently talking to himself, usually in an under-  
 tone—sometimes would burst out, full voice, and speak  
 a full sentence to himself, then, as if he would get tired  
 that way, he would sit down a minute and lay down his  
 cigar, rise up instantly again and walk backwards and  
 forwards again; this was habitual with him—as often as  
 once every day, and perhaps nearly as often as twice  
 every day; that was his main exercise; on one of those 557  
 occasions, in his soliloquy, he said: “They are both fools  
 —both fools—and that miserable old Hottentot has never  
 been capable of taking care of his property; the conse-  
 quence is, that I am a pauper, and now his mother is the  
 worst of the two,” or, rather, “my mother,” or “the old  
 woman”—he about as often called her one as the other;  
 he told Mrs. Gates that she was the worst of the two; I  
 believe I mentioned that; there is another thing which  
 I want to mention that I observed on that visit at home;  
 Mr. Hulbert made a visit there during that time; Mr. 558  
 Hulbert and our family had been intimate always, and  
 been on very good terms, as far as I know; Mr. Hulbert  
 came in, in a good deal of hurried manner, and asked if  
 Carlton was at home; “Yes;” “Is the Doctor at home?”  
 “Yes;” “Well,” says he, “I have only a moment to stay,  
 and I want to see Carlton a minute,” and went right up-  
 stairs into my son’s room—stayed there I don’t know  
 how long—my impression is, from two to three hours;  
 soon, after finding Carlton, dismissed the carriage he 559  
 came in, I believe—came down to dinner; Mr. Hulbert  
 and Carlton both came down to dinner together; Car-  
 lton’s deportment was much as usual—rather sullen at  
 the table; Mr. Hulbert appeared flurried and unnatural  
 —the whole thing seemed unnatural; they took dinner—  
 the usual conversation; Mr. Hulbert is usually social,  
 and frequently jocose—a pleasant manner; that day it  
 was a good deal different; there was evidently a good  
 deal of restraint, which I did not understand at all; the  
 family all noticed it as much as myself; Mr. Hulbert

560 tried a joke or two—it didn't go—didn't succeed well at all ; after that went back to his room, and to smoke and and so on, I don't know what ; some time after dark, or about dusk, Mr. Hulbert took his leave ; that peculiarity of deportment excited my suspicions a good deal that that there was improper interference with my deranged son ; in this connection, I wanted to say, that, after my son had got through with his professional studies, I was very anxious he should go to work, believing that it was necessary to saving him ; I made him several  
 561 propositions, none of which he acceded to ; finally, I offered him, if he would go to work practising medicine, that he should have a home there, and I would give him all that I could of practice and let him make what he could, and, if he would lay up a thousand dollars, I would add a thousand dollars to every one he would lay up, until he was well under weigh and doing well ; that is all I think of at that interview ; in April, I left, after being home about a month ; in April, I returned again, and stayed, I think, about two days and nights at  
 562 home at that time ; I found him weaker ; he had had a fit of sickness, and his state of mind, as near as I could judge, was just about the same.

Q. Let me ask you what amount you allowed him when he did not accept your offer ?

A. He was then receiving \$1,200 a year.

Q. As you stated before ?

A. Well, that should be understood ; he was receiving \$1,200 from me ; I gave him \$1,200 a year and Mrs. Gates whatever she could ; I came to Youkers in April,  
 563 and found him weaker—he had been sick ; his mind, as near as I could judge, was just about the same ; I did not consider it safe for me to be much about the house ; I stayed two nights and two days I think, and took away my trunk, and left the house entirely at that time, and did not then expect to return again for some time.

Q. What had he done before that to give you reason to believe that you were not safe there ?

A. Oh, well, he had said repeatedly that he would shoot me—that is one thing, and—well, on that occasion

he came home I think intoxicated—I only got a glimpse 564  
of him ; his talk, his tone and manner of acting, and all,  
was different from anything I had ever seen before ; I  
believed him to be intoxicated or under the influence of  
strong drink.

Q. Was that usual with him ?

A. I had never seen it before or since ; I never saw  
him when I thought he was under the influence of drink,  
never was intoxicated at all on any other occasion ; that  
was on the occasion when it is in evidence here, I believe,  
that he said he would shoot me and dropped his revolver 565  
on the floor and it was picked up and handed to him.

Q. That was in January ?

A. I was there in January—part in December and  
part in January—I cannot say which, but it was at that  
visit ; that brings it down to my return in July ; contrary  
to my expectation when I left the house entirely I heard  
from various sources that his deportment towards his  
mother was such as to be unbearable and dangerous—  
dangerous for her to be there with him.

Mr. LYON objected to the testimony, and said that 566  
when the witness concluded he should move to strike out  
such parts as were irrelevant and immaterial.

*Witness :* I went there the first of July under those  
impressions, with the sole object to see if anything could  
be done with him, or what should be done to better the  
state of things at home ; at that time I went I found  
him much the same as he had been before.

The SURROGATE requested the witness to confine him- 567  
self to the facts of the case.

Mr. VAN PELT said that he did not wish the witness to  
state anything except what passed between him and  
Carlton.

*Witness :* The first time I went home Doctor Upham  
had then attended him during the sickness of six or eight

568 weeks, and found matters there badly enough; I went up to Doctor Upham and held a consultation with Doctor Upham as regards those matters, to see whether anything could be done with him, or whether it was best anything should be done with him; Doctor Upham and myself came to the conclusion——

[Mr. LYON objected; objection sustained.]

Q. Go on and state what took place with Carlton?

569 A. I don't know that anything took place there more than a repetition of the same boisterous deportment all the time.

Q. Did you see any alteration or amelioration in his case?

A. Any amelioration.

Q. Yes, sir?

A. No, I don't think there was any material alteration in the case; Mrs. Gates position was certainly not a very pleasant one, for she dare not go in his room without  
570 some strong person going in before her.

Q. What position did you take during your visits there to observe Carlton's conduct and his actions?

A. Well, I was about him all the time; I don't know as anything particular, with the exception of examining or ascertaining his movements on the piazza; I sat upon the sofa usually with a newspaper in my hand, and saw him walk back and forth before the window.

Q. Did you make his case a subject of special examination and study?

571 A. That was my principal business during the month I was there at home.

Q. To what do you attribute the symptoms that you have described in his case?

A. Well, insanity—most assuredly.

Q. Can you account for them in any other supposition?

A. Not at all—unaccountable.

[Mr. LYON objected.]

Q. Have you any doubt whatever that he was insane? 572

A. I have not—I know he was insane.

Q. What were your son's physical symptoms, or the symptoms of his physical disease?

A. Well, he had incipient tubercles in his lungs; he had derangement of the liver, gall bladder, and of the digestive organs, more or less generally, were the leading features of his condition.

Q. Will you state whether insane patients have a proneness to have these diseases, and die of these diseases? 573

A. They have.

(Signed) AMOS W. GATES, M.D.

Mrs. HANNAH BEEBE, being duly sworn and examined before the SURROGATE, in opposition to said will, testifies as follows:

*Examined by* Mr. VAN PELT:

574

Q. Where do you reside?

A. Yonkers.

Q. Were you acquainted with Doctor Gates' family?

A. I have been for eight years.

Q. Were you acquainted with Carlton Gates?

A. Not very intimately.

Q. Had you seen him frequently?

A. I have seen him four or five times since he returned from Europe the last time.

Q. Were you frequently at the house?

575

A. Not very frequently; four or five times.

Q. Were you there on or about the 15th of July last?

A. Yes, sir; I dined with his mother on the 15th of July last.

Q. What was the occasion of your going there?

A. She invited me specially to dine?

Q. Who did you see there?

A. Carlton and his mother only.

Q. In what condition of health did you find Carlton?

576 A. I did not see Carlton Gates until I met him at the dinner table.

Q. Well, what passed?

A. The usual salutations passed; I asked specially after his health; he seemed so hoarse; he said that he had been well up to that time, but was then suffering very much from neglect.

Q. Did you hear him converse much?

A. I did not until we were seated at the table.

Q. Until you were seated at the table?

577 A. No, sir; I did not see him, until as we were about to take our seats at the table.

Q. What was the subject of his conversation at the table?

A. He said that he was very unwell, in consequence of the neglect of his mother to get him proper food, or have it properly prepared; that she had cruelly and shamefully neglected him; that for the past few weeks he had been very well, but that for the last few days he had suffered for want of proper food, properly prepared, and  
578 that he was then suffering from it.

Q. In what terms did he speak of his mother?

A. Oh! as very cruel.

Q. Give us the language he used?

A. He said that she was a very bad woman, that she had a very black, vile heart, that she had the heart of a fiend.

*The SURROGATE:* Use the words he used as near as you can.

579 A. I am, exactly.

Q. These words you are now repeating are the words he used?

A. Nothing else but the very words he used.

Q. What further did he say to you of his mother?

A. I could not look at her, I did not like to look at her; I looked at him; he rose and asked his mother: "Why did you do so—tell me! tell me! why are you so cruel—why do you treat me so—why do you shamefully

neglect me when I have been so kind to you, and have brought you so much from Europe, of late—I want you to tell me—tell me!” 580

Q. Where was his mother sitting at the time?

A. Opposite him; he was at the head of the table, she was opposite, and I at the side; he did not ask her to partake of any kind of food; he waited on me; I observed it, and asked Mrs. Gates if she would not like some of the chicken which he had just been carving for me.

Q. Was the table well supplied? 581

A. With everything; it was well and excellently supplied, but he said that he could not find anything fit to eat; I asked him if he did not consider that that was fit to eat—that I thought the chicken was roasted very nicely, and everything well.

Q. What reply did his mother make when he said this?

A. She made none; she did not dare to speak; she was afraid a knife would come at her across the table.

Q. What further did he say? 582

A. He said that the very idea that she sat so silent was proof at once she was an idiot and a fool.

Q. What else did he say?

A. He said that he had been to the asylum that day to see about having her put in, and that the keeper had said that she would be very kindly cared for, and that she should have the privilege to go to the city and enjoy herself all day if she would promise that she would return at night.

Q. What did he say about her being old? 583

A. I asked him if he did not consider her age, and, being an idiot or lunatic, if there was not some excuse for her keeping such a bad table and bad house, admitting all he said; he said it was such a filthy, dirty house, he could not live there, that there was nothing fit to eat; I asked him if he did not consider her age, and being a lunatic, some excuse; he said: “Old! I don’t consider her old, but she will be old some day, and fit to die;” he says: “It is a custom to shed tears over a relative, but I

584 shall not shed many tears over that old woman ;" he says  
 "I may shed two tears and possibly not one."

Q. Who did he refer you to as witnesses to confirm the  
 statements he made about his mother ?

A. He said that if I did not believe what he had been  
 saying about that woman that he would refer me to his  
 friends Doctor Hulbert and Mr. and Mrs. Darling.

Q. On what point ?

A. On the point of her being such a bad woman and  
 not keeping a decent ———

585 Q. You say that he offered his mother nothing to eat ?

A. No, he did not ; I asked her if she would not have  
 something to eat, seeing that she was not helped, that  
 she had been overlooked ; I asked her if she would not  
 have some of the chicken, that it was very nice.

Q. He was at the head of the table, carvibg ?

A. Yes, sir.

Q. He waited on you and neglected his mother ?

A. Yes, sir.

586 *Cross-examined by Mr. LYON :*

Q. You say this was in July last ?

A. Yes, sir.

Q. The 15th of July last ?

A. Yes, sir.

Q. You dined there at whose invitation ?

A. Mrs. Gates.

Q. What time did you dine ?

A. Six o'clock.

Q. What time did you get there that day ?

587 A. From a quarter to half-past five.

Q. The first you saw of him was when he came in to  
 dinner ?

A. Yes, sir ; the bell announced the dinner, and he  
 came in ; I stood at the window when he came into the  
 dining-room, and when he walked to the table I did also.

Q. Had he been to town ?

A. I don't know, sir.

Q. Where are you living now ?

A. In Yonkers.

- Q. Whereabouts in Yonkers ? 588  
 A. On Broadway.  
 Q. With whom—what family ?  
 A. I have my own family.  
 Q. You keep house do you ?  
 A. I live there—my husband and daughter.  
 Q. You are not living at Dr. Gates' .  
 A. Now, for a few days.  
 Q. You are living now at Doctor Gates' place, in the same house where this scene occurred ?  
 A. I am—yes—only this week ; I leave it on Monday. 589  
 Q. (*By* Mr. VAN PELT) : You have never seen any lack of anything to eat there ?  
 A. Oh ! everything very abundant.  
 Q. (*By* Mr. LYON) : You are speaking of the present time now ?  
 A. Yes, sir.  
 Q. How often did you dine there before that day in the last six months ?  
 A. I had never dined there before ; I had breakfast there one Sabbath before, and he was very morose. 590  
 Q. And those were the two occasions in his life-time ?  
 A. That I sat down at the table with him ; being a stranger, I was very much surprised at him.  
 (Signed) MRS. HANNAH BEEBE.

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ELIZABETH MURPHY, being sworn and examined before the SURROGATE, in opposition to said will, testified as follows : 591

*Examined by* Mr. VAN PELT.

- Q. How old are you ?  
 A. Fifteen years old the 4th of December.  
 Q. Where do you live ?  
 A. In Riverdale.  
 Q. Are you acquainted with Dr. Gates and Mrs. Gates ?  
 A. Well, not very intimate.  
 Q. Have you ever lived with them, or in their house ?  
 A. Yes, sir.

- 592 Q. Did you know Carlton ?  
 A. Yes, sir ; I was there for a few days with him.  
 Q. At what time ?  
 A. At the time he came home from Newport last.  
 Q. Were you there when he was taken down sick the last time ?  
 A. Yes, sir.  
 Q. How long before he died ?  
 A. Well, about two weeks.  
 Q. What did you do there ?  
 593 A. I was attending him.  
 Q. Waiting upon him ?  
 A. Yes, sir.  
 Q. In his sick room.  
 A. Yes, sir.  
 Q. How much of the time was you with him ?  
 A. I was from Saturday evening until Wednesday afternoon.  
 Q. Nearly all the time.  
 A. Yes, sir, every day, only while I was eating my  
 594 meals.  
 Q. Did he talk with you much ?  
 A. Yes, sir ; he was all the time talking.  
 Q. What did he talk about ?  
 A. Well, most all about his mother.  
 Q. What did he say about her ?  
 A. He said she was an old fool ; that she was giving him poison ; he would not touch the victuals she gave him ; saying that she was putting poison in everything she handled to give him ; and everything I took up to him  
 595 he would say : " Did Mrs. Gates send it ? " if I said " Yes," he would tell me to go and throw them in the swill-pail.  
 Q. Did Mrs. Gates send them up to him by you ?  
 A. Well, some things ; if I told him Mrs. Gates sent it he would tell me to throw it into the swill pail, that there was poison in it.  
 Q. If you told him that anybody else had sent it up, what would he do ?  
 A. He would eat it then.

Q. What did Mrs. Gates send up by you to Carlton? 596

A. Glasses of jelly, bread and butter and coffee; he would not take anything only what she did not send him.

Q. What did he tell you to do with the things which she sent him?

A. To put them into the swill pail.

Q. What did he say?

A. He told me not to take them into the kitchen, but to throw them right into the swill pail.

Q. What reason did he give you for that?

A. He said that his mother had put poison on them. 597

Q. Did you carry the things out as he directed?

A. No, sir.

Q. What did you do with them?

A. I eat them.

Q. They did not poison you?

A. No, sir.

Q. Did you ever hear him speak of Dr. Arnold?

A. Yes, sir; he sent me for Dr. Arnold and I went for him, and he came that afternoon and left a bottle of medicine, and when he went out Carlton called me, and he said there is a bottle of poison. 598

Q. Was that the bottle of medicine that Dr. Arnold had left for him?

A. To take—yes, sir; Dr. Arnold gave it to him?

Q. Did he take it?

A. No, sir; when I gave it to him, he said that he would not touch it, to lay it back on the bureau and cover it up, where nobody would see it; he said that Dr. Arnold was a damn fool.

Q. What did he say about Dr. Arnold not knowing how to attend a patient? 599

A. He said that he did not know how to attend anybody; that when his father visited a patient he staid for half an hour, and questioned him until he understood his case, but Dr. Arnold sat there like a fool, and did not ask him any questions, and when he asked him a question he would hardly know how to answer it.

Q. The bottle that Dr. Arnold left remained there?

A. Yes, sir.

- 600 Q. Carlton did not take it?  
 A. No, sir ; not while I was there.  
 Q. Did you take that?  
 A. No, sir.  
 Q. Did Carlton send you at any time for Dr. Coles ?  
 A. Yes, sir ; he gave me a note to take down to him.  
 Q. Did you do so ?  
 A. Yes, sir ; I went down ; Dr. Coles was not there, but  
 his son was there and he wrote on it, and wanted to  
 know if he wanted it sent to Dr. Coles ; that if he did,  
 601 he would send it by post to-morrow ; I took it back, and  
 when he saw it he tore it up in pieces.  
 Q. What was the nature of that note ; what did he  
 send for Dr. Coles to do ?

Mr. LYONS: Do you know ?

- Q. Was it for Doctor Coles to come and visit him ?  
 A. Yes, sir.  
 Q. And Doctor Coles was not home ?  
 602 A. No, sir.  
 Q. Was that before or after Dr. Hulbert came ?  
 A. It was before.  
 Q. How soon after did he come ?  
 A. The next time I saw him was the second day after  
 that.  
 Q. Did you see Carlton use any violence against his  
 mother at any time.  
 A. Yes, sir ; he would send me down for her, and when  
 she came into to the room he would set up in bed, and  
 603 say to her to get out of there as quick as she could, if  
 she wouldn't he would shoot her before she got out ;  
 after she went down-stairs he sent me down to her for  
 the key of the wine-cellar ; she gave me the key, and  
 said that that was not the key of the wine-cellar, but that  
 it would open it ; when I took it to him he said that it  
 was not the key, and that it would not open the cellar ; I  
 told him the key would open the cellar, for I had opened  
 it with it to put some ice in there, and he said it wouldn't ;  
 he sent me down to Mrs. Gates over a dozen times for the

one thing—to send him up the key ; so then she said she 604  
 had no more keys—that she had sent him all the keys she  
 had, and that if he hadn't it there she had given it to him  
 the day he came home, along with the bedroom key ; he  
 sprang right out of the bed—he had his night-shirt on—  
 and says he : “ Never mind, Lizzie ” ; he run right into  
 the library, and called me in after him and told me to  
 open the windows ; I opened the windows, and he looked  
 around and said there was no keys there, and he told me  
 to go down to Mrs. Gates and tell her that if she did not  
 send the key up in five minutes he would send for a 605  
 locksmith and break open the door ; he then told me to  
 go over to Mr. Radford's and ask him to send over his two  
 men to do a little job for him—that he would pay them  
 well ; he told me to tell them that, but not to say anything  
 about it to Mr. Radford ; I went over and rung the bell,  
 and a girl came to the door ; Mr. Radford said the men  
 could go—to go over to the stables, or wherever the  
 men were, and tell them ; I went over, and I heard him  
 halloo to Michael and tell him to go ; so, when I told  
 him, he said he would be over in a few minutes ; I went 606  
 back and went up-stairs and told Carlton they were  
 coming, and he told me to go down to the front door and  
 when I saw them coming to bring them in the front door,  
 and not let them come in through the kitchen door, for  
 fear Mrs. Gates might see them ; I done so, and when  
 we went up-stairs I left the front door open, and Mrs.  
 Gates saw it open and went and shut it ; when he heard  
 it shut he made the men come in the room and he shut  
 the door, fearing that she would hear him ; he told the  
 men not to be frightened, that he wanted them to do a 607  
 little job for him ; they asked him what it was ; he asked  
 them first whether they knew where the wine-cellar was,  
 and they told him yes, for one of the men had lived there  
 before ; he told them to go down-stairs and get both their  
 shoulders against the door and break it open ; one of  
 them said that he would not like to risk it, but that, if  
 Mrs. Gates and he were both willing, that they would be  
 glad to assist them that far ; so then, when he found the  
 men wouldn't do it, he held up his hand and said he

608 would give them so much between them, but the men  
 wouldn't do it; they said they didn't want to do it, and  
 both said they wouldn't do it; that he had better send  
 for Matty Smith, the constable; so then they went away,  
 and he said that he would have to send me down for the  
 locksmith to break open the door; so when they went  
 away he wanted me to go down-stairs and try the key,  
 after all this was over, and he had the key all the time;  
 he told me to go down-stairs and try the key if it would  
 open it, and he said: "You will not give it to Mrs. Gates  
 609 if I give it to you;" I told him I would not; he said he  
 was afraid I would, and took it back; he then sent down  
 for the waiter-girl and she came up, and he wanted to  
 give the key to her, and she didn't seem to like to take  
 it; she said, if Mrs. Gates would ask her for it, she  
 wouldn't like to refuse her; and then he said that it  
 made no difference, and didn't send her down; when  
 Madam Migy came home he gave it to her, and she went  
 down-stairs and opened the cellar with the key; when  
 he brought it back he says: "There are four or five  
 610 skeys for that cellar, but I didn't know that was one."

Q. It was the key all the time—the real key?

A. Yes, sir; the key I took up first was the key that  
 opened it at last.

Q. What else did you see that he did that was strange?

A. He would make me lock the door when I was in the  
 room, and tell me that if any one came to the door not to  
 open it—that he wanted to get asleep; I locked the door,  
 and he turned his face from the door, and I was at the  
 window, and he turned right around and looked at me,  
 611 and his eyes got so large that I was afraid and didn't  
 know what to do, and he kept looking at me and would  
 not take his eyes off of me; and, most every day, he  
 would keep me running around the room opening the  
 windows and shutting them, feeling the way the wind  
 was coming in almost the whole day.

Q. Do you think of anything else—did you hear him  
 say anything about his mother being crazy?

A. Oh, yes; he said his mother was crazy—was as  
 crazy as she could be; I said I didn't know how she was

crazy ; I said I didn't see anything like that in her : 612  
 " Why," he says, " don't you see she is crazy—she is running around from morning to night like an old fool ; she is nothing but an old chicken-head "—I kind of smiled—" Don't you always see her amongst the chickens."

Q. Who did he say told him that she was crazy ?

A. No, sir ; he said that himself ; he said she was crazy.

Q. Did you hear him say anything about his intending to put her in an asylum ? 613

A. He said that he would try to get her in an asylum if he could—that he was trying it already ; he said : " She is trying to make out I am crazy ; I am not crazy, but she is crazy."

Q. What was his mother's conduct towards him ?

A. He said she treated him just as bad as she could.

Q. Did you see how she treated Carlton ?

A. Yes, sir ; I could not see—I don't think any one could do any better towards him than what she did ; but she was afraid to go into the room ; he would raise right up and try to catch her ; she always sent in a couple before her because she was afraid to go in alone. 614

Q. You saw no unkindness, or neglect, on the part of his mother ?

A. No, sir ; she sent him everything ; she stayed up at nights until twelve o'clock making cakes, and jellies, and everything nice, and when I took anything up he would ask me who made it, and, if I said Mrs. Gates, he would tell me to throw it right into the swill-pail.

Q. You said you eat them yourself ? 615

A. Yes, sir.

*Cross-examined by Mr. LYON :*

Q. When did you leave Dr. Gates ?

A. On Wednesday afternoon.

Q. Can you fix about what month this was in ?

A. I can't, really—I don't know—I think it was in August.

Q. Then you were there from Sunday until Wednesday ?

- 616 A. From Saturday afternoon until Wednesday.  
 Q. How came you to go away?  
 A. When Mrs. Gates went away my mother didn't let me live there any longer.  
 Q. Did you receive any communication from Mrs. Gates about your going away?  
 A. No, sir; Mrs. Gates was gone in the morning.  
 Q. You had no directions in regard to leaving from Mrs. Gates?  
 A. No, sir.
- 617 Q. Or from Carlton?  
 A. No, sir.  
 Q. You were not discharged by Mrs. Gates or Carlton?  
 A. No, sir; Carlton wanted to keep me there, and said Mrs. Gates must not put me away, that he wanted me there as one of the servants.  
 Q. (*By Mr. VAN PELT*): You went away from there because your mother would not let you remain after Mrs. Gates left.  
 A. Yes, sir.

618 (Signed) ELIZABETH MURPHY.

Mr. VAN PELT, on behalf of the contestants gave notice that they rested their case.

On motion—adjourned to November 11th, 1869, at 10 o'clock, A. M.

JOHN W. MILLS,  
*Surrogate.*

619 November 11th, 1869.—Met pursuant to adjournment

Present—Mr. LYON and Mr. PRIME, for *proponents*.

Mr. ROMER, for *Village of Yonkers*.

Mr. VAN PELT and Mr. NORRIS, for *contestants*.

Mr. LYON stated to the Court the facts which the proponents proposed to prove in relation to the condition of Carlton Gates at the time of making the will.

Dr. GEORGE B. UPHAM resumed the stand, and his cross-examination was proceeded with by Mr. Lyon. 620

Q. You have already testified that in March and April you attended Carlton Gates for about two months, for a disease which you have already explained, and I do not propose to go over that—will you tell me whether, as a part of the treatment of that disease, you prescribed stimulants, and if so, what?

A. I did, during the course of his illness, prescribe stimulants—brandy at one time. 621

Q. Give the name you gave to his disease—you spoke of pneumonia—was there any peculiar name that you gave to it besides pneumonia, the disease he had—what was the disease that he was suffering under at that time?

A. Pleuro pneumonia; that was inflammation involving the pleuro, also the substance of the lung—inflammation involving those two.

Q. It was a sharp attack?

A. Yes, sir.

Q. Was there anything else in his condition at that time, which made it, in your judgment, wise to prescribe stimulants—was there any typhoid character about it? 622

A. There was; it was assuming at that time a typhoid condition.

Q. And hence you prescribed these stimulants?

A. Yes, sir.

Q. In what form did he take them?

A. He took brandy with milk.

Q. Did he take other things besides brandy that were stimulating? 623

A. He expressed a wish, at one time, to take champagne, and I allowed him to take champagne in small quantities.

Q. From the symptoms exhibited, had you any reason to suppose that he took both those stimulants, to perhaps a greater extent than you had intended—how is that—from any symptoms which he exhibited, did you find out that he took more of those stimulants really than you intended he should take in giving the order?

624 A. I did suspect, at times, that he took them to excess

Q. May not your opinion upon that subject have been based upon the fact that stimulants had a quicker or greater effect upon him than you had supposed—is there not a great difference in people as to the immediate effect of stimulants?

A. The susceptibility differs in different persons.

Q. But, any rate, from symptoms which you saw developed, you thought that he had taken a greater amount of stimulants than you had ordered, although they had

625 been a part of your system of treatment of him?

A. I don't know that he took these stimulants in very great excess, but I had reason to suspect, at different times, that he had indulged a little too freely in the use of them.

Q. When you were examined before, the question was put to you in regard to the conclusion you arrived at as to his mental condition at that time, and you said that you thought he was acting under a delusion in that sickness in regard to his mother—that was the expression

626 you used, I believe?

A. I think it was.

Q. Was that opinion formed upon your belief that the statements he made were not true in regard to his mother—he stated to you what his mother had done, or had not done?

A. Yes, sir.

Q. Was that opinion you formed based upon the belief that those statements were not true?

A. Yes, sir.

627 Q. You would not have come to that conclusion if you had known or believed those statements were true in regard to his mother?

A. Certainly not.

Q. You have also given an account of an occasion when you went to his house upon his invitation or otherwise, and you found him ready for what he called a “high old time;” will you describe what you saw upon his table in the way of stimulants at the time you entered that room—what preparation for a high old time in the

way of drink—I mean in the use of ardent spirits, or 628  
wines, etc.—what was on the table?

A. Well, there was several bottles; I don't know, really, what they contained.

Q. Well, they were bottles with liquor of some kind in them?

A. I presume they were.

Q. They were full bottles?

A. I did not notice that.

Q. Were all the bottles on the table such as to indicate that he was supplied with liquors for the purpose of 629  
indulging in this dinner, or spree, or whatever it was?

A. Yes, sir.

Q. What was his condition, as regards the effect of liquor, at that time?

A. He was intoxicated—that is not my language, sir, “high old time;” I did not use any such language as that.

Mr. LYON: It was repeated to me in such a way as if a high old time was expected; you say he did not use that 630  
expression.

A. Oh! no, sir.

Q. It was pretty evident, at any rate, to use a more elegant form, that there was a symposium to be enacted there at any rate, if you carried out his wishes and sat down to it?

A. Yes, sir.

*Re-direct examination by Mr. VAN PELT:*

Q. How long a time did you attend Carlton Gates? 631

A. From the 1st of March until about the 30th of April.

Q. That is about six weeks?

A. Yes, sir.

Q. How often did you see him?

A. I saw him every day, and sometimes, during the early part of his illness, I saw him twice a day.

Q. Did you have a good opportunity to see the extent to which he indulged in liquor?

A. I think I did.

632 Q. Was he under the influence of liquor during all that time?

A. Oh, no.

Q. What portion of the time?

A. Well, occasionally when I would visit him I thought he had been indulging a little too freely in stimulants.

Q. Was it a suspicion you had that he had been indulging, or was it founded upon any evidence?

A. It was founded on pretty clear evidence.

Q. What was it?

633 A. His conduct and his language.

Q. How many occasions during that time did you see him under the influence of liquor?

A. I cannot be precise or definite as to the number of times.

Q. About how many times?

A. Well, I should say three times.

Q. In the six weeks?

A. Yes, sir.

Q. You had no doubt that he had been indulging too freely on these occasions—those three times?

A. I had no doubt in my own mind.

Q. And on the other occasions when you were there you discovered nothing to justify a suspicion even that he had been indulging?

A. No, sir.

Q. Excepting on these three occasions?

A. Excepting on these three occasions.

Q. What did he say and do that struck you as strange on the occasions when he had not been indulging in

635 liquor?

A. I don't remember, now, the different things.

Q. Well, the most prominent of them—not all of them, but the most prominent of them?

A. On one occasion in the early part, when I first discovered it, was this matter of poisoning.

Q. What was the language?

A. The first I discovered was this matter of poisoning.

Q. What did he say about that?

A. Well, he said he thought I had made a mistake in my diagnosis.

Q. Did he mention any name at that time ? 636

A. In connection with what.

Q. With the poisoning ?

A. No, sir.

Q. Did he have that impression very strongly upon his mind that he had been poisoned ?

A. He seemed to have that impression that he had been poisoned, positively, at first—at the early part of my first or second visit.

Q. Were you satisfied that he had not been poisoned ?

A. Oh, yes ; and he seemed to be satisfied himself. 637

Q. He did ?

A. Yes, sir ; at the end of the visit, after we had talked the matter over thoroughly.

Q. Do you remember anything else that he said or did that struck you as strange, when he was not under the influence of liquor ?

A. When he was not under the influence of liquor.

Q. Yes, sir.

A. Nothing occurs to me now.

Q. Is it a symptom of insanity for a person to suppose 638 that he is poisoned, to have the delusion that he has been poisoned ?

A. It may be.

Q. Is it not quite a common symptom ?

A. Of insanity.

Q. Yes ?

A. It may be of one form of insanity, I presume.

Q. Did you ever discover any evidence in his case to warrant his suspicion that he had been poisoned ?

A. No, sir. 639

Q. And he had the idea when he was in no way under the influence of liquor that he had been poisoned ?

A. I think he had.

Q. You said that if you had believed the things he said about his mother to be true, you would not have thought that he was under a delusion at the time he said them, what things did he say about his mother ?

A. Well, he said she was constantly interfering with his domestic arrangements ; that it was utterly impossi-

640 ble for him to keep servants in the house, and made his position in the family generally uncomfortable.

Q. Did you have an opportunity yourself of seeing what his mother's conduct and treatment was?

A. Yes, sir.

Q. Toward him and towards the servants?

A. Not towards the servants; I had an opportunity of knowing pretty well what her conduct was toward Carlton Gates.

Q. What was it?

641 A. It was generally very kind.

Q. Then you know, of your own knowledge, that the things he said of his mother, so far as he was concerned, were untrue?

A. Yes, sir.

Q. And you inferred that they were in regard to the servants also, did you?

A. I don't know as I inferred anything about the servants at the time.

642 Q. Did you ever see her come in contact with the servants?

A. No, sir.

Q. Or any person in the house?

A. No, sir.

Q. Was she always gentle to Carlton—watching with him, waiting upon him, nursing him, doing all that a mother could?

643 A. She was not nursing with him, because he would not let her come into the house; when I was attending him, she was constantly coming to my house making inquiries; she was living in the city at the time.

Q. She was taking all the interest that a mother could in a son?

A. Yes, sir.

Q. She seemed to be entirely devoted to him?

A. Yes, sir; entirely so.

Q. Then, you know that this delusion he was laboring under was a genuine delusion?

A. It seemed so to me.

Q. And you had an opportunity of seeing and judging every day, for thirteen weeks?

A. For how long.

644

Q. For about thirteen weeks—during the time you attended him?

A. Thirteen weeks.

Q. Oh, six weeks?

A. Yes, sir.

Q. Have you any doubt at all, Doctor, from what you saw and knew of his case, derived from your actual examination of him, and your attendance upon him, that his mind was affected?

A. I have not any doubt at all that at times he was laboring under great excitement—mental excitement. 645

Q. So much so as to amount to a delusion?

A. I think it did in this matter of his mother's conduct, or what he supposed to be his mother's conduct.

Q. What is the technical term for it—moral insanity?

A. No; there is quite a distinction.

Q. What is the difference—what do you call it?

A. I should say it was a case of—he was a monomaniac—that is, partially insane upon that one point.

Q. A monomaniac is insane upon one point?

646

A. I understand it so.

Q. And he was in that condition?

A. Yes, sir.

Q. Will you specify, if you please, the times that you have stated, that you have seen him under the influence of liquor—when were they?

A. I could not specify the times—I never kept a memorandum of them.

Q. How near did they occur together?

A. Well, they might have been three days in succession; I never kept any accurate memorandum of these facts, and it is impossible for me to state at this distance of time. 647

Q. You could tell, during your attendance upon him, whether he was a drinking man, from seeing him as often as you did?

A. Yes.

Q. Well, was he drinking man?

A. What do you mean—addicted to the intemperate use of intoxicating liquors.

648 Q. Addicted to the use of intoxicating liquors to an unusual extent?

A. I don't think, at the time, that he was what you would call an intemperate man in the use of intoxicating liquors.

Q. And that his indulgence, on these occasions, was the exception, instead of the rule, in his case?

A. It seemed so to me at that time.

Q. You do not, then, attribute these evidences that you have spoken of, of his insanity or monomania, to the use of liquor?

649 A. I don't exactly understand your question.

Q. You do not, then, attribute these evidences that you have spoken of, of his insanity or monomania, to the use of liquor?

A. I did not state that there was any evidence of insanity.

Q. Well, or monomania; I said afterwards, or monomania—call it either; you did not attribute what you saw in his case, which was unusual and extraordinary, to the use of liquor.

650 A. I did at times; the first—I think it was the third visit I made, when he commenced speaking about this matter of poisoning, I thought that he had been drinking—indulging a little too freely in the use of—

Q. And did you think that he had been drinking on all the occasions when he thought he had been poisoned?

A. No, sir.

Q. Then, you did not attribute to the use of liquor, or to the undue use of liquor, all the evidences that you saw in his conduct of monomania?

651 A. No, sir.

Q. The poisoning or the feeling towards his mother?

A. No, sir; more especially, to his feeling towards his mother; I am pretty sure that on that occasion he had not been drinking.

Q. (*By Mr. Lyon*): On your first visit to him, you found him in a feverish, excited state, did you not?

A. Yes, sir.

Q. And the second?

A. Yes, sir.

652

Q. And he so continued a very sick man for two or three days—did not he?

A. Yes, sir.

Q. And his recovery—was it slow or otherwise?

A. It was very slow.

Q. Now, as a symptom of that disease—as something springing from that disease—is there not occasions when the mind wanders?

A. Yes, sir.

Q. That disease does produce just those results?

653

A. Yes, sir; there may be delirium.

Q. Is it not perfectly in accordance with the symptoms of that disease, that, while laboring under that disease, he may have said and did just those things he did?

A. Yes, sir.

Q. (*By* Mr. VAN PELT): Was this feeling towards his mother uniform with him from first to last?

[Mr. LYON objected; objection overruled; exception.]

654

A. I only discovered it on one occasion.

Q. When was that?

A. That was during his convalescence.

Q. This feeling or antipathy towards his mother?

A. Yes, sir; it was early in the morning; he was sitting up at the time—sitting up in the hall—and he was just getting ready to take his breakfast.

Q. Was he perfectly free from liquor then?

[Mr. LYON objected.]

655

Q. What was his condition then, as to being under the influence of liquor?

A. He was not under the influence of liquor at that time.

Q. Then you could not attribute his delusion with regard to his mother, at that time, to the influence of liquor?

A. I could not.

656 Q. Could you account for it any other way than on the supposition that he was a monomaniac?

A. I think I could not, sir.

Q. Sir?

A. I could not, sir.

Q. (*By* Mr. LYON): Will you tell what he said with regard to his mother on that occasion—I believe you repeated it once, but I want to have it in this connection—what did he say on that occasion and refer to in regard to his mother—what were the remarks he made about

657 her?

A. Well, I asked him how he was feeling this morning; he said that he should feel better—he thought he should do better—if it was not for his mother; he said he thought it was his duty to state to me that; he said his mother was giving him a great deal of trouble, and causing him a great deal of unhappiness; he said she was constantly interfering with his household arrangements; as fast as he would get them adjusted she would come in and derange them, and put them in a complete state of  
658 confusion; he said she was a very weak-minded woman;—this is exceedingly unpleasant to me—cannot it be omitted—for me to make these statements in the presence of these parties.

Mr. VAN PELT: We would like to have it all out, so far as we are concerned.

Q. Had it reference to making his personal condition there uncomfortable?

659 A. Yes, sir.

Q. About how long after his first sickness did this take place, with reference to the first of March—what time in March was this conversation, about?

A. It was about the last of March.

Q. He was still sick and feeble?

A. Yes, sir.

Q. Did he require, for the purpose of his recovery, good, well-cooked food?

A. He did; it was very important that he should have it.

Q. He knew that, as a physician,—and perhaps you 660  
had told him so?

A. I had been constantly urging that matter upon him, and, since you have spoken of it, that brings the matter more clearly to my mind, and I think that the subject of this conversation about his mother was introduced by that; he said that it was impossible for him to get good food; I recollect it now, that he could not get food properly cooked—that it was impossible for him to get good food in the house.

Q. Take these symptoms of poisoning, and suppose 661  
diseases of the liver and gall-bladder is not the effect of the disease of those organs in producing an uncomfortable state of the stomach in their symptoms like that produced by a certain kind of poison, may not the introduction of poison, not immediately deadly, into the system of a person, in its effect produce upon the coats of the stomach precisely the same class of feelings as are produced by some diseases of the gall-bladder and liver?

A. Not precisely, but they may in some respects resemble those feelings or sensations. 662

Q. May it not be possible that a person, say a physician, cognizant with the effects of poison, laboring under this disease, to imagine that he has been poisoned, without being under the influence of any delusion other than that arising from sickness and weakness of mind, caused by that sickness, when he is really suffering from the diseases I have referred to, that he should imagine that he was poisoned, referring to the sensations of his stomach? 663

A. Yes, sir.

Q. (By Mr. VAN PELT): I think I understood you to say that you had seen Mrs. Gates' manner and her treatment towards Carlton, and you knew that his accusations of neglect were entirely unfounded?

A. I knew that to be so during my treatment of the young man.

Q. (By Mr. LYON): did I understand you correctly, that after the second or third day, Mrs. Gates left there, and you did not see her with Carlton?

664 A. No, sir; I did not state that.

Q. How long after you commenced your treatment, did you cease seeing her there—how long did she remain where she was attending upon Carlton, after you commenced your attendance there?

A. It was about the fourth day that she disappeared from the house.

Q. So that after the fourth day, you did not see her in attendance upon Carlton from that time out?

A. No, sir.

665 Q. (*By Mr. VAN PELT*): And during those three days, when you did see her in attendance upon him, what was the character of her attendance?

A. I think she was not admitted into his room; she seemed to be exceedingly anxious about him, and questioned me very closely about his condition; and it seemed to be her wish decidedly, that everything should be done that could be done for his comfort.

Q. And that was done by her so far as you saw?

A. It was.

666 Q. So far as you had the opportunity of seeing and judging everything was done that could be done?

A. So far as she was concerned it was.

Q. Did you see anything on her part that showed an indifference or want of feeling towards him?

A. No, sir.

Q. Were her efforts for him judicious and proper?

A. Perfectly so.

Q. And that led you to suppose that his antipathy towards his mother was a delusion?

667 A. Yes, sir; I knew that that young man was making a statement to me right in direct conflict with my knowledge of certain facts.

Q. Facts that you had a certain knowledge of?

A. Yes, sir; I knew that this poor woman was running backwards and forwards, between Yonkers and New York, worrying and wearing herself out, and that he was making a statement of facts right in direct conflict with the true facts.

Q. Putting her in just the reverse situation that she ought to occupy?

A. Yes, sir; so much so that I ceased to have any patience to treat him on that account. 668

Q. You had personal knowledge of that fact?

A. Yes, sir.

Q. (*By* Mr. LYON): You had knowledge of what fact—that she came to you and inquired kindly after him?

A. Yes, sir; and she brought little articles for me to carry up to him; I remember carrying up articles for her to him; he had treated her so that she did not dare to approach him, and she brought them to me.

Q. (*By* the SURROGATE): Did you ever see them together? 669

A. No, sir.

(Signed) G. B. UPHAM, *M. D.*

Dr. EDMUND S. F. ARNOLD, being called in behalf of proponents, and sworn by the SURROGATE, was examined by Mr. LYON, and testified as follows:

Q. Where do you reside? 670

A. I reside in Yonkers.

Q. You are practising medicine there?

A. Yes, sir; practising medicine there, and surgery.

Q. For how many years?

A. Fifteen years—between fifteen and sixteen years in that place.

Q. Did you know Carlton Gates?

A. I knew him slightly, only, previous to the sickness.

Q. For how long a time?

A. Some three or four years; I only saw him very rarely. 671

Q. He visited your house, though, socially?

A. He had visited my house socially.

Q. And at those times you had had conversation with him?

A. Yes, sir.

Q. Was he a man of education?

A. I always considered him a man of good education, indeed.

672 Q. Was he a man given to the cultivation of his tastes in the fine arts?

A. Very much so; he was a man of considerable travel and reading—one whose mind had been very highly cultivated, I considered, in those particulars.

Q. You attended him in his last sickness, I believe?

A. I did.

Q. Do you remember the day that you was first called in professionally, and at what time it was—if you have any memorandum of it which you kept at the time you are at liberty to refer to it?

673 A. I think it was Tuesday, the 10th of August, last; I will see if I am right—the 10th of August.

Q. What time in the day was it that you went there—do you remember the first time?

A. Yes, I saw him in the morning of that day—the forenoon.

Q. What was the difficulty he was suffering under?

A. He seemed to be suffering with a high degree of nervous fever running into delirium.

674 Q. What was your first diagnosis of the disease he was suffering from?

A. He was suffering with—I considered that his fever mainly was owing to mental causes; he was a man in very feeble health physically, that is consumptive his tendency; there was considerable derangement of the stomach and liver, and his fever was more owing to mental causes operating upon this debilitated condition of the system.

675 Q. Will you state what took place on your first consultation with him—took place between him and yourself?

A. He asked me to set down; remarked to me—says he: “Doctor, you will not be able to understand my case unless I have given you a full account of various matters which you would not be conversant with;” he then entered into a long statement in regard to his return from Europe, remarking that he had been trustee of the property, that he had intended when he came home to settle there, and as such to make his mother comfort-

able; he then went on to detail the establishment he had got together, and then he subsequently spoke of his sickness; I need not go through, of course, with all the matters he related. 676

Q. He spoke of this establishment he got together—did he say what became of that establishment?

A. Well, he went on; he mentioned the presents which he had brought home from Europe, and exactly what he had done; he said that he had got a nice housekeeper, and cook, etc.; that he had got a nice establishment together, and had made various improvements in the property, and that his whole, sole idea was to settle down and take care of his mother; he said that he had always loved his mother, and wished to make her comfortable and settle down there; he then spoke of his sickness—I don't recollect whether it was before or after his return from Newport, but it was during his sickness; he stated that after his sickness his mother had got the housekeeper out of the house, and all the servants, and that when he came home he found that everything had been upset; I did not give credit to all this of course, though I had reason to think that part of it was correct; but he said that when he came home there was nobody left in the house but a little boy, and that if it had not been for his neighbor sending him over some soup, or something or other, that he might have starved there; he spoke in very great discouragement of the condition of things at home, and said that now he had got together another establishment, and that he was very much afraid now that he was down upon his back that they would all be ——— that everything would be upset again; that seemed to be the great dread upon his mind, that the establishment would be all cleared out; and he consequently said that he could not, he really did not feel that he was safe, or that he could get the nourishment or care that he required if his mother remained in the house. 677 678 679

Q. Did you see him again that day?

A. No, sir, I did not see him until the following day.

Q. What was his condition on that day?

680 A. Well, his condition on the second day was more excited than on the first; in fact, he was more delirious, generally, than he was on the first day; his mind seemed to be altogether brooding on this one topic, and he had reached a very high, nervous excitement; I considered, then, that on whatever topic he spoke, he spoke like a delirious man; his mind was off its balance; still you could always recall him to himself in conversing upon any topic.

Q. What was his pulse at that time?

681 A. His pulse was then over 100—a weak nervous pulse.

Q. Did you discover, upon that day, any other physical symptom of disease there you had noticed the previous days?

A. No, sir; he complained of moloise at the stomach—he could not take food; he said it was no use to attempt taking food—that he could not digest it; that everything lay heavy on his stomach, and went against him.

682 Q. Did he speak of great uneasiness and discomfort about the stomach?

A. Yes, sir; that is what I have just stated—"Moloise;" I express it by that term; it was not pain, but an uneasy, uncomfortable feeling, which he had said he had suffered for a long period; his stomach had been for several months past in that condition.

Q. What time in the week did that bring it?

A. That was on Wednesday—the next day; on the second day he took scarcely any food whatever.

Q. When did you see him again?

683 A. I saw him, then, on the Thursday again; if you will allow me to refer to my notes, I can tell the exact number of visits; I saw him on the Thursday; on that day I saw him again in consultation with Dr. Wood.

Q. That was the first day that Dr. Wood was in consultation with you?

A. That is the first day I met Dr. Wood there.

Q. What was his condition that day?

A. His condition was very much the same as on the previous day.

Q. High fever?

624

A. High fever.

Q. And rapid pulse?

A. Rapid pulse—considerably debilitated—and more or less delirious at intervals, and in a very high state of mental excitement, amounting to delirium.

Q. Upon that day, did you have any interview with Mrs. Gates, and inform her in regard to his condition?

A. I don't recollect whether it was on the Wednesday or Thursday; but in consequence of this feeling, considering that it was, in a great measure, due to that feeling which he had in regard to his mother—that strong dread of her presence—I considered it my duty to recommend that Mrs. Gates should not remain in the house with him; I had an interview with Mrs. Gates, and told her my reasons for so doing; and Mrs. Gates promised that she would go down to the city; and I promised that I would, from day to day, notify her of his condition. 685

Q. Will you be good enough to say whether you said that, in your opinion as a physician, his recovery depended upon her keeping absent from the house? 686

A. I did; I thought I could see no hope of any improvement in his condition until that request was complied with; I considered it necessary to quiet his mind by every possible means.

Q. When did you next see him?

A. I saw him again on Friday, and from that time I saw him twice; I saw him twice on the Friday, and, I think, from that time, every day, twice, and on those occasions that I met Dr. Wood, three times.

Q. What was his condition on this Friday? 687

A. On the Friday, there was not much variation; he became rather more quiet after he became assured that he would not be troubled by his mother; he slept better; and on the Thursday evening he had taken considerable nourishment; he took nourishment more freely, I think, on Thursday evening and Thursday night, and from that time he took his nourishment better than he had done previously.

Q. On that day, what conversation did you have with him in regard to—

688. A. As to family matters?

Q. Upon that Friday, August 12th, when was the first time that he spoke to you upon the subject of making a will?

A. On Friday; Friday was the day that he first spoke to me about making a will, and I rather advised him against it; told him that I did not think he was in a sufficiently calm condition to take matters rightly into consideration; that I thought it was better he should not?

689. Q. Was that the first day he gave any evidence to you that he thought he was very sick; that he referred to his—

A. Oh, yes; he considered himself a very sick man from the first; in fact, when he spoke of those matters, on the very first day, he said: "Doctor, I don't know how things will go with me;" says he: "It has been such a constant source of annoyance to me—the continual trouble in the house—that I don't see my way out of it;" says he: "It is going to kill me;" I recommended to him at that time, on the first interview: "If you cannot feel comfortable at home, why don't you take comfortable lodgings elsewhere?" he said: "I could not do that very well;" says he: "See what I have here—my collections are here, and my books, and so on; I live upon my books; I am a great student, and these curiosities you see, they may be curiosities to you, but to me they are matters of reminiscence; my whole life, in a measure, is bound up in them;" in the course of conversation afterwards, he said: "I do not know but what it would be as well; you may look out and if you can find any place where I can get plenty of air, I will take it; the air is not properly oxygenated in my lungs;" and it was just so; he was laboring under what we call acute tuberculous, and the consequence was that he felt the need of abundant air in his lungs; but in every interview, he always spoke discouragingly of himself and his condition.

691. Q. The next day it was August 14th; did you see him on that day?

A. On Saturday; yes, sir.

692

Q. What did you find was his condition at that time?

A. Well, there was very little variation, except, perhaps, that his pulse had risen a little more; his delirium was not as great on Saturday as it had been on the previous days; that is, I mean, although not free from it, still he conversed much more rationally on general topics; he conversed very clearly; his memory was perfect; he would, for instance, when I went there in the morning, say; "Now, doctor, I want you to have an exact account of everything that occurred during the night;" and if his nurse in giving it, forgot a single item, he would correct him; there was not the most minute circumstance that he did remember. 693

Q. That is when he would request the nurse to give you an account of what had taken place during the night?

A. Yes, sir; of what had taken place between one visit and another, or at night; he was extremely particular on all matters of minutia.

Q. And if the nurse, in giving that statement to you, forgot anything, he would correct him? 694

A. Yes, sir; he would say: "There, now, you have forgotten something."

Q. Well, Dr. Wood visited him also, in consultation with you on that day?

A. Yes, sir.

Q. Did you find it necessary—had Mrs. Gates taken your advice and suggestions and remained away from the house during that period of time—did you find it necessary to have Dr. Wood speak to her again on the subject? 695

A. Yes, sir; she came around to the house, and we were afraid that he would find it out; he still retained that feeling.

Q. You did communicate with Dr. Wood again the necessity of her remaining away in his present condition?

A. Yes, sir.

Q. Your first communication to her was on what day?

A. Wednesday or Thursday—I think it was the first

696 day ; I went on Wednesday, not on the first day I went there, but on the second.

Q. Had she been back there every day from that time until you had your second interview with her ?

A. She was in Yonkers, but I don't know whether she was there.

Q. She was at the house when Dr. Wood and you spoke to her ?

A. She was at the house when the doctor and myself spoke to her ; yes, sir.

697 Q. Upon that day did he say anything about the condition of his stomach, as to whether he had reason to suspect he had taken poison into his system ?

A. Well, if I recollect, it was on the Friday he spoke to me about that ; he had two or three times hinted to me ; asked me whether it was not possible, in connection with the state of his stomach, that he might have been poisoned ; threw out various suggestions, whether it might not have been that the vessels on board the steamer coming home from Newport had not been unclean, and caused him to be poisoned ; I told him that there was no reason to think anything of the kind ; that I did not judge from his symptoms that there was any poison ; but, on the Friday, I think it was when I went in the morning, he sent his nurse out and asked me to close the door, and to see that there was nobody around in the hall, and so on, and then he told me the whole story that induced him to think it possible that he might have been poisoned ; well, he gave a very reasonable and connected statement.

699 Mr. VAN PELT objected to the last part of the statement of the witness, "that he gave a very reasonable and connected statement."

Mr. LYON said that he was willing to strike it out.

*The witness :* I simply mean, that he gave me his grounds for thinking so.

Q. Now, was his mother or father or any member of his family connected with that ?

A. Not in the slightest degree.

699

Q. He did not state that he suspected his mother or any member of his family, in connection with that poisoning?

A. No, sir.

Q. You saw him the next day again?

A. On the Sunday.

Q. On the Sunday?

A. Yes, sir.

Q. What was his condition, both mental and physical, on that day?

700

A. Well, I think, as on the Saturday, he was very little troubled at all with regard to any mental difficulty, but his physical condition remained in just the same feeble state—of course, it varied a little from day to day; if he did not sleep so well at night, he generally felt a little worse the next day, and at one time he would not take quite as much nourishment as at another, and of course all those things would affect him; there was remarkably little variation in his physical condition from day to day; I would state here, that I told Doctor Hulbert, from the first, when he asked me what his condition was—I told him I thought he might get over this, to keep him quiet, and, if we could, prevent the development of the lung disease; what I dreaded, knowing this tuberculous condition of the lung—what I dreaded was its taking an active form, and I supposed it would lead to a rapid disorganization of the lung; I was afraid to see the lung disease develop rapidly.

701

Q. On Sunday what did you prescribe, with reference to quieting him?

702

A. I think it was on Sunday and Saturday night I gave him some Dover's powders, but I cannot recollect exactly the sequence; I know that on one night I gave him morphine, and on one night Dover's powders—I think it was on Sunday night I gave him a good dose of Dover's powders.

Q. You saw him again Monday morning?

A. Yes, sir.

Q. What was his condition?

703 A. As I say, the same ; his pulse, if anything, was a little more rapid, and he was very feeble—very much discouraged about himself ; but his mind was undoubtedly then clear upon all topics ; I did not see, from that time, any further delirium—from the Monday morning.

Q. From that time out his mind was perfectly clear ?

A. His mind was perfectly clear from that time ; but he had evidently, to my mind, made up his mind that he was going to die.

704 Q. He had some conversation with you about keeping the windows open—was that on Saturday or Sunday ?

A. I don't recollect on which day that was.

Q. What was that conversation in regard to keeping the windows open ?

705 A. Let me see—by the way, that must have been on Sunday, because I was going to meet Doctor Wood the following day, and he said that he must have the windows open—that he must have the fresh air ; I had, on several occasions, been very much afraid that he would take cold. the air being changeable—a part of the time damp—the weather was not clear part of the time ; but he said that he could not sleep—that he could not get along—if he had not plenty of fresh air ; and he says : “ Now, Doctor, oblige me this once, and have all the windows opened ; ” he said : “ I know I shall not be able to sleep unless you let me have the window open ; ” I said I would for one night, and I told the nurse that, if the night should be very cold, to see that he was not too cold.

706 Q. What was the effect of leaving the windows open, as described by himself, and as witnessed by you on the following day ?

A. Well, he seemed to sleep better ; I told him that I would allow him, for one night, to have his own way, and that I would then talk the matter over with Dr. Wood on the following day ; I don't know that it injured him any.

Q. On the seventeenth—look at your diary and see what day that is—was that Tuesday ?

A. Yes, sir.

Q. How long was it then since he had referred to his mother—what was the last day he referred to her ?

A. Well, after this arrangement was once made, he never spoke to me again about family matters—after the first occasion ; but on the seventeenth, I think it was—I don't know whether it was on the seventeenth or eighteenth—he spoke then of his mother with perfect calmness ; he said he knew she was in the house, but it did not seem to excite him any further. 707

Q. He told you, on the seventeenth or eighteenth, that he knew his mother was in the house ?

A. I cannot say which day it was, but he said he knew his mother was in the house ; he said that he knew she came there ; I don't know how he learned it, but he did not speak of it with any excitement ; he did not express any wish to see any of the family, neither did I feel inclined to excite him by referring to the subject myself. 708

Q. But, from this occasion, he never did refer to the matter until he referred to it and said that he knew she had been there, or knew that she had been there every day ?

A. I don't remember his saying that he knew that she had been there every day, but he said that he knew she did come there. 709

Q. On the seventeenth, in regard to the directions you gave him, did he attend to them strictly—what was the impression on his own mind in regard to his recovery ?

A. He was very much discouraged about that time ; he would ask me if there was any improvement, and I rather evaded the question ; I told him I thought there were some symptoms that were decidedly better, but, in the main, I could not find any material change in him.

Q. Do you remember a remark he made to Dr. Wood when you and he were in consultation on that day, or the day of the last preceding consultation ? 710

A. On the Monday ?

Q. Having reference to his condition ?

A. Oh, he spoke, I know, on the Thursday very discouragingly about his recovery to Dr. Wood ; Dr. Wood spoke cheerfully to him—that he did not see, really, at that time that there was not a possibility of his recovery, but he spoke very discouragingly about it himself.

711 Q. Do you recollect the answer he made when Dr. Wood made some cheerful remark to him—the answer he made on that subject?

A. No, sir, I do not; I know he was very much—very certain himself that it was not going to terminate then in recovery; he was perfectly conscious of his condition.

Q. Do you remember that he made any reference to the fact that the Doctor was speaking thus cheerfully to encourage him?

A. Oh, yes.

712 Q. Tell what he said in that regard?

A. I could not recollect a word; I know there was a conversation to that effect; oh, then he would shake his head as much as to say, "I don't exactly agree with you."

Q. Now, upon the eighteenth, which I believe was Thursday or Wednesday, upon that occasion do you recollect his giving some statement to you in which he stopped for a while—explain what took place in regard to that—in that conversation?

713 A. I don't recollect any particular conversation at that time; he would, sometimes, when he was talking, stop for a while, and would be perfectly quiet, and then he would go on again, taking up the subject where he left off.

Q. Precisely in connection with the point he had been talking about?

A. Yes, sir.

Q. It was from his feebleness?

A. I judged that it was entirely from debility—there  
714 was no confusion of mind whatever.

Q. But while giving you a statement in regard to his condition, he would stop and rest awhile, and then he would go on, making a perfect connection of the idea?

A. Yes, sir; his ideas were perfectly collected during that time.

Q. On Thursday, the nineteenth, was Doctor Wood there?

A. Doctor Wood met me on that day.

Q. In consultation?

A. That was the last consultation.

715

Q. How many times did you see him on that day?

A. I saw him in the morning; I saw him with Doctor Wood in the middle of the day, and I saw him again in the evening.

Q. Now, during that whole day, and on each one of those occasions, what was the condition of his mind?

A. Well, I stated before that on the Monday I considered his mind pretty clear, and on the Tuesday, Wednesday and Thursday, I considered his mind perfectly clear; there was nothing after that which indicated delirium—nothing after the Sunday; on the Sunday his delirium had ran pretty high; he had talked pretty wild, I was told, and I attributed it to the powders; but after that I would say, in speaking of him, that although I could see no improvement in his physical condition, his mind was clearly improved; I so stated to Doctor Wood when I met him on Thursday; when he asked me, I told him one thing—I said: “I feel very much discouraged about his physical condition, but his mind is perfectly clear.”

717

Q. Was that subject referred to after the consultation between yourself and the Doctor?

A. It was; the Doctor went up to see Carlton, and I was present, and he talked with him some time, and the remark the Doctor made when we came out of the room together—says the Doctor: “His mind,” the expression was, “I am sure his mind is as clear as a bell.”

Q. You saw him again on Friday?

A. On Friday I saw him again.

Q. What was the condition of his mind?

718

A. Just the same; I think his mind was clear to the last.

Q. He died on Saturday?

A. He died on the Saturday, sir; I first noticed a decidedly unfavorable change on the Friday evening; Friday evening he seemed very much exhausted; I should state in that connection that on the Wednesday evening when I went there I was afraid that his right lung—the condition of the right lung was altering, and I made a

719 very slight examination, for he was in a very feeble condition, and I preferred waiting over until Dr. Wood came the next day ; so I made a slight examination, but determined to have a thorough examination when I had the consultation the next day, so that we could make an examination both together, so as to subject him to the fatigue only once ; I had some reason to think his right lung was becoming congested on the Wednesday evening and I called Dr. Wood's attention to it, and we made the examination together and found such to be the fact, that  
 720 there was evidently congestion taking place in the right lung, and from that, of course, we formed a very unfavorable opinion as to the result of his case.

Q. His death was caused by the disease developing in that sudden way—that disease ?

A. Yes, sir ; well, he died rather suddenly at the last ; that I attributed to fatigue, and his having had a very restless night ; his death, according to the post mortem examination, appears to have been sudden ; he sank very rapidly and rather unexpectedly on the Saturday, but  
 721 still an unfavorable change had commenced on the Friday evening, and he had a very restless night after that ; on the Saturday morning he complained of some difficulty of breathing, dyspnoea, and I supposed that perhaps it might be of benefit to him to have him removed into a rocking-chair near the window, and he was taken out of bed and placed in the chair ; it appears that he rather enjoyed it, but he became very much fatigued and subsequently when I went around and saw him, the second visit, at the time I was to meet Dr. Wood, I found him  
 722 in rather a restless sleep, breathing with some difficulty, and I didn't consider it prudent then to wake him ; the Doctor, not anticipating any immediate danger, did not come up that day, although we expected him, and subsequently I learned that after this sleep he woke up and requested to be turned over and went off very quietly.

Q. Did you assist at his post mortem examination ?

A. I did sir.

Q. Did you find the diagnosis which you had made of his disease established by the result ?

A. Entirely so.

723

Q. What was the condition of the gall bladder?

A. The gall bladder was very much distended, probably three times its natural size, with considerable thickening in the ducts of the gall bladder; the bile would escape into the bowels with considerable difficulty.

Q. What was the condition of the liver?

A. The liver was in a state of incipient—what they call cirrhosis—incipient—the whole of the external portion of the liver was considerably diseased—changes going on in the liver.

724

Q. Would that condition of the gall bladder and liver account for the sufferings which he complained of on the coats of the stomach?

A. I thought so; I thought so after the examination had been made; there was a great deal of dark colored bile in his bowels, and the stomach, which was removed at that time and sent to Dr. Doremus for examination, was found by him, also, to be full of this dark grumous—dark fluid; it was perhaps bile and disorganized blood.

Q. As a medical fact, would the sensations which he experienced from that condition of the stomach induced by that condition of the gall bladder and liver resemble in any way the presence of poison of some description in the stomach—would they both produce to some extent the same sensations?

725

A. Well, so far as the injurious effects of poison got over, that might lead to a chronic state of inflammation of the stomach and it would produce very similar symptoms.

Q. On that Thursday, what in your opinion was the condition of Dr. Carlton Gates' mind and memory as to making a disposition of his property by will, or attending to any other business that required discretion and judgment?

726

A. I should judge from conversations I had with him that he could attend to any matter of that kind as well as I could.

Q. Would you have hesitated to become a witness to his will on that day if invited to do so?

727 A. I should not.

Q. Was there anything that occurred after that Monday, in all of your conversation with him and of your examinations of him, as to induce you to believe that he was not in a competent condition to transact business—after that Monday?

A. Nothing whatever.

Q. Did you ever have any conversation with him in reference to the effect of liquor upon him at any time?

728 A. Well, I never conversed with him on that subject, but on one occasion in speaking to me he told me that he had taken a glass of brandy and water, and that it had affected him very powerfully; I should judge that he was a man who could not drink much liquor without being immediately affected by it; he was sensitive, nervous.

Q. Did he say where he took the brandy and water?

A. I think he said it was at the Hoffman House.

Q. How did he describe the effect upon him?

729 A. He said that he hardly knew what he was about; he said that at the time he was in a state of nervous and mental suffering, and that he thought a drink would make him feel better, and that he went into the bar-room of the Hoffman House and called for a glass of brandy and water, which he drank, and which affected him immediately, so that he hardly knew what he was about.

*Cross-examined, by Mr. VAN PELT:*

730 Q. Did you have any particular acquaintance with Carlton Gates before you attended him as his physician?

A. I met him occasionally, and as I said, he also visited our house a few years ago; we had receptions in the evening, and on two different occasions he was there; the only time that I ever had any lengthened interviews with him.

Q. Did you consider yourself well acquainted with him?

A. I should not consider myself, by any means, intimate with him.

Q. If he had had any peculiarities of mind or character, would you have discovered them in the course of your acquaintance with him? 731

A. Well, I formed an opinion with regard to his general disposition, but nothing beyond that as to education and so on.

Q. You say you was first called to attend him on the 10th of August last?

A. Yes, sir.

Q. What time in the day was it?

A. Sometime in the forenoon. 732

Q. Do you know how you received the message to visit him?

A. I believe he sent me a note to call up and see him ; I am not certain about it.

Q. You went immediately, I suppose.

A. I went—yes, sir—very shortly.

Q. How near did you live to the Gates' residence?

A. Right opposite.

Q. Within a few hundred feet?

A. Yes, sir. 733

Q. Whom did you see when you went there?

A. I saw the housekeeper ; I saw Dr. Hulbert ; I saw, I think, Madame Migy and the servant.

Q. What was the housekeeper's name, Miss Sault?

A. Sault, I believe ; Miss Sault, I think.

Q. Whom did you see first?

A. That I cannot say.

Q. Where was Carlton?

A. He was in bed.

Q. In which room? 734

A. Let me see ; he first occupied, I think, the south-east room—I think it was ; I don't know.

Q. Was not it a small room, next to the library?

A. There was a room ; I think a room between.

Q. Was it between the large room in which he died, and the library?

A. No, sir—it was not in the small room—it was a large room.

Q. Where you first saw him?

735 A. Yes, sir; one of the main rooms of the house—the south-east room I think it was—and there was a middle room between it, and then the library.

Q. How long did you remain there on that occasion?

A. I must have been there, I should think, from half to three-quarters of an hour—perhaps an hour.

Q. Was any one present at that interview with him?

A. No, sir.

Q. No one whatever?

A. I think not—no; as far as I can judge, he was  
736 alone when he had that conversation with me—that I recollect.

Q. Do you know how long he had been in bed?

A. No, sir; he was very feeble; he said he had been there; I think he said he had not been able to get up for six days, but how long he had taken to his bed previous to that, I don't know.

Q. Did you have any conversation with any one in the house on that occasion?

A. After I left the room I saw Dr. Hulbert, and he  
737 asked me how he was—what I thought of him.

Q. Where did you see Dr. Hulbert?

A. In the library.

Q. Was that the adjoining room to this bedroom?

A. No, sir; there was an intermediate room between the two.

Q. It was within how many feet of it?

A. Well, just the breadth of the hall—about a back hall room.

Q. When Dr. Hulbert asked you what you thought of  
738 Carlton, what did you tell him?

A. I told him I thought just precisely the account I have given—a sort of nervous fever; I attributed it a great deal to mental excitement.

Q. Did you tell him that he was dangerously ill?

A. I did; I told him, however, that if we could keep clear of the development of the lung trouble, that he might get through it.

Q. But you gave him to understand, decidedly, that you thought he was in a dangerous condition?

A. That Carlton was a very sick man, certainly ; yes, 739  
sir.

Q. What time in the morning was this—the first visit ?

A. It was in the forenoon, I should judge, perhaps  
about ten or eleven o'clock.

Q. It was before dinner ?

A. Yes, sir.

Q. Do you remember taking a lunch there on that day ?

A. I do not.

Q. You don't remember whether you did or not ?

A. No, sir. 740

Q. What time did you call the next day ?

A. In the forenoon.

Q. Whom did you see there ?

A. I saw the same parties every day ; I took lunch  
there one day, I know.

Q. Was it only one day.

A. I think I took lunch one day when Dr. Wood was  
there, but those were matters I did not really pay any at-  
tention to ; I should not recollect whether I did or not.

Q. I want to call your attention to that, because some- 741  
thing transpired on those occasions that I want to be  
particular about ; do you remember taking lunch there,  
on more than one occasion ?

A. I may have taken lunch there twice.

Q. Only twice ?

A. I think it was on those days that I met Dr. Wood  
there, when lunch was prepared for him.

Q. Did you see Carlton there alone the second day ?

A. As a general thing I saw Carlton alone every time,  
except with the nurse ; sometimes when he wanted to 742  
talk with me he would send him out of the room.

Q. There was no one else present then, excepting the  
nurse ?

A. Sometimes he was sent out of the room.

Q. Did you see Dr. Hulbert there on every occasion ?

A. I saw Dr. Hulbert on every occasion, because I  
generally made a report to him after the visit to the pa-  
tient.

Q. Of what—of the condition you found Carlton in ?

743 A. Of the condition I found Carlton in.

Q. Where did you find him—in the library always?

A. Always met him in the library; he would wait for me there.

Q. Was you ever there on any occasion when you did not find Dr. Hulbert there, and when you did not have an interview with him.

A. Yes, sir.

Q. Was not he there the whole time that you were visiting Carlton Gates?

744 A. He was there most of the time.

Q. Well, the whole time?

A. The whole of what time.

Q. The whole of the time that you were visiting the patient?

A. I say he was in the house most of the time.

Q. Was not he there in the house on every occasion that you went there to visit the patient?

A. Most of the time.

645 Q. Are you able now to specify a single instance or occasion when he was not in the house, when you went there to visit the patient?

A. Yes, sir; he was not in the house when he was away performing his duty; when he went home to perform his clerical duties?

Q. What duties?

A. Why, at White Plains here.

Q. When did he go to perform those?

746 A. Why, on the Sabbath, I presume; I don't think he was there during the whole time; I cannot recollect exactly; I know he was there most of the time.

Q. Do you know he came here to perform any of his clerical duties during the time you were visiting the patient?

A. I don't actually know it.

Q. Are you able now, from your own knowledge, to state a single interview or occasion when you were at the Gates' house, that you did not see Dr. Hulbert there, or know that he was in the house?

A. No; I know on more than one occasion he was out when I was there, but where he was I don't know.

Q. Mention one occasion ?

747

A. I cannot say—I took no particular notice of these things ; I knew that he would be out of the house when I would be there.

Q. Whereabouts would he be ?

A. That I cannot say.

Q. Off of the premises ?

A. Off of the premises I expect.

Q. All that you are able to say, is that you did not see him there ?

A. That I did not see him there.

748

Q. On how many occasions did not you see him ?

A. That is more than I can tell ; I took no particular notice of it.

Q. I want you to fix it as near as you can ?

A. It is impossible for me to fix it.

Q. Can you swear that it was more than twice ?

A. I think I can.

Q. How many times ?

A. I cannot swear.

Q. Will you swear to as many as twenty times ?

749

A. I cannot.

Q. Will you swear to as many as six times ?

A. No, sir, I cannot ; my mind is not clear on that subject at all.

Q. Don't you know that he was almost invariably there ?

A. I have told you that he was there most of the time ; I cannot come any nearer than that as to special occasions ; the thing has passed out of my mind long ago ; it was not a thing I attributed much importance to ; Carlton himself wished me to speak to Dr. Hulbert, and give him a full report of his condition, and I made it a point to comply with his wishes ; he had told me that he very much wished—that he wished Dr. Hulbert to be there, and when he saw Dr. Hulbert with me on one occasion, I think he said that he wished him there ; that he had sent for Dr. Hulbert because he wished Dr. Hulbert to see that he had every comfort there, and he wanted him to give him as much time as he could ; that he told me himself ; I supposed it was all right.

750

751 Q. On how many occasions was Dr. Hulbert present when you were having your interviews with Carlton Gates?

A. Very seldom.

Q. That ain't answering the question?

A. I cannot answer ; I have given the answer in a general way.

Q. I want you to be a little more particular, if you can?

A. I could not give you a more particular answer.

752 Q. Was he present on two occasions?

A. I cannot tell you how many times he was in the room, or how many times the nurse was there, or how many times a servant came into the room while I was there.

Q. Do you remember of his being there on two of these occasions?

A. No, sir, I cannot say I do ; he may have been there on two or more, or he may have been there only once ; as a general thing when I went in to talk with

753 Carlton, I generally saw him alone ; or when he had a man nurse in the house, I generally saw him with the nurse.

Q. Did you ever find the little girl, Elizabeth Murphy, in attendance upon him?

A. The first day or two, before he had a man nurse, if he wanted anything, she might bring it into the room.

Q. You know that little girl?

A. I saw her once or twice ; I don't know whether I could recognize her if I saw her again.

754 Q. That was before the man nurse came?

A. Yes, sir ; the first two or three days I was in attendance.

Q. Did his physical condition grow worse from the first visit down to the time he died?

A. No ; it did not ; there was really very little variation from day to day in his physical condition.

Q. Was there any improvement in his condition?

A. Yes, sir ; some days I felt more hopeful about him ; if he had a good night's rest he would feel better the following day.

Q. Was there any day during his sickness that you could have any reasonable hope that he would recover? 755

A. Oh, yes.

Q. When?

A. I considered until the Wednesday previous to his death, when I found this congestion taking place in his lung; up to that time I had entertained some hopes of his recovery.

Q. After that you had none?

A. After that I thought it very improbable that he could recover. 756

Q. That was on Wednesday?

A. On the Wednesday previous to his death.

Q. Then you saw, from that time on, that he was steadily growing worse?

A. No, sir; although we noticed that, I did not find any actual change in his condition, or in his pulse, or in his general symptoms—I mean externally—serious, until, as I say, the Friday evening previous to his death.

Q. Did not he gradually grow worse from Wednesday?

A. No, sir; there was very little physical change in him. 757

Q. Did not his pulse increase?

A. No, sir; not at all.

Q. Did not his pulse increase from 120 to 140 in those two days?

A. Not until the Friday; the first time I noticed that increase of his pulse was on Friday.

Q. Wasn't his pulse 140 on Thursday?

A. No, sir.

Q. What was it? 758

A. 120, I believe—120.

Q. On Thursday?

A. On Thursday.

Q. Are you sure of that?

A. Well, I think so.

Q. Did you keep any account in your book of the state of his pulse on these different visits?

A. No, sir; I don't enter it in my book—I am not in the habit of doing so.

- 759 Q. Did you keep it anywhere ?  
 A. I have a record in my pocket.  
 Q. Have you got it at hand [witness produces the record].  
 Q. When did you make those ?  
 A. These notes I made immediately after the sickness.  
 Q. After his death ?  
 A. Yes, sir.  
 Q. Immediately after his death ?  
 A. Yes, sir.
- 760 Q. You did not make it as you made your visits at the house ?  
 A. No, sir ; I did not look forward then to any legal proceedings.  
 Q. Did you, during your visits there, make any memorandum of the state of his pulse ?  
 A. Yes, sir ; I made occasional memorandums on slips of paper.  
 Q. Where are those ?  
 A. I have not got them ; I made up this from them.
- 761 Q. I will ask you this question : Did not his pulse steadily rise from the time you made your first visit until he died ?  
 A. No, sir ; there would not be a change for several days ; once, his pulse was more quiet ; during the first few days his pulse was about 100 ; on Monday, his pulse got up to about 120, and it remained at that from one visit to another—always the same thing.  
 Q. What was his pulse when you were first called in ?  
 A. About 100.
- 762 Q. Was it ever lower ?  
 A. No, sir ; it was never lower.  
 Q. Then, it continually increased from that to how much ?  
 A. Well, it went up very quickly, either that day or the following day to 120, and it was a remark I made that, day after day, I found his pulse always at that figure.  
 Q. Did it ever fall below ?  
 A. No, sir ; it remained steadily at that.

Q. And when it moved again it moved up? 763

A. Here I have got it—130 ; that is the 20th of August, ten days after the commencement of my attendance.

Q. What day of the week was that?

A. On Friday.

Q. What was it on Thursday?

A. On Thursday it was 120.

Q. And on Friday?

A. 130 ; that was one thing ; of course, I could not think of any improvement in his physical condition as long as that pulse remained. 764

Q. But as it was continually increasing?

A. It was not continuously increasing, for it remained at that one figure.

Q. Now, when it did change, it increased?

A. Yes, sir.

Q. Could you say that you had any just hope that he would improve, while his pulse remained as high as that?

A. No ; I cannot say that I had any hope after this difficulty was shown in the lung. 765

Q. When did you first hear anything said about making a will?

A. The first time was on Friday a week ; I think it was on Friday, a week previous to his death.

Q. How many days had you attended him when that thing was mentioned?

A. I think, on the fourth day of the attendance, commencing on Tuesday.

Q. And whom did you hear it first mentioned by?

A. He spoke to me about it himself. 766

Q. What did he say?

A. Well, he said he wanted to make a will, and said that he should like to make his will, and that he had spoken to his lawyer several times about it.

Q. What did you say to him?

A. I told him I did not think he was in a proper condition to make a will, that his mind was too excited, and that he had better wait—something of that kind—until he felt better,

767 Q. Did his lawyer speak to you about it?

A. When I got home I found a message from his lawyer requesting to see me, and I went around to see him; he asked me whether I thought—that he did not like to do anything until he knew what my opinion was as to his condition—whether I thought that he was in a proper condition to make a will or not.

Q. Who was his lawyer?

A. That was Mr. Romer; and I told him I did not at that time consider that he was in a fit condition to make a will; his mind had been—that he was, more or less, delirious, and probably would not be able to connect his thoughts—in fact, that he was generally in that state of excitement that I did not consider, then, that he was fit to make the will; I advised him against it, and told his lawyer that I did not think a will made at that time would be good for anything.

Q. At that time, I understood you to say, his pulse was a hundred?

Mr. LYON: He has not said so.

769

Q. What was about his pulse then?

A. That was about the general average—about one hundred.

Q. You say that it never went down, but always went up, when it changed so that it could not be less than a hundred?

A. Well, it averaged a hundred; it very seldom varied from that point during those days.

Q. And then you did not think he was in a condition to make a will?

770

A. Then I did not consider he was.

Q. When did you see his lawyer again on that subject?

A. I had no further conversation about it after that; Mr. Romer asked me at the time whether I thought he would be able to make a will; I told him I could not say—that perhaps he would, and perhaps he would not—it would depend entirely on the course of his symptoms; Mr. Romer was then going out of town, and the following week I had no idea—I heard no more about the will.

Q. And you did not know when he was making the will? 771

A. No, sir; I did not know it until after it was made.

Q. Do you mean to say that you never held any conversation with any person on the subject of his making a will after that?

A. I have no recollection of doing so; I might have—I don't know; but, if I had been asked during that week whether he was in a state to make a will, I should have said, decidedly, yes; I cannot recall whether I was asked; I certainly had no conversation about it. 772

Q. What feature of his case was better on that Thursday than it was on the Friday when you stated that he was not in a condition to make his will?

A. He was perfectly calm and rational.

Q. Is a person more apt to be calm when his pulse is a hundred and twenty or thirty than he is when it is a hundred?

A. That depends very much upon circumstances; he may have a pulse at a hundred and forty, and yet his mind be perfectly clear, and he may have a pulse much slower than that and his mind be very much affected; the pulse is in no way owing to his mental symptoms. 773

Q. Did not his pulse indicate his physical condition?

A. It indicated his physical condition, but it had no bearing upon his mental condition.

Q. What was the cause of this delirium or excitement which you say was upon him when you first saw him?

A. I think it arose entirely out of family matters—of course, acting upon a system already diseased, and in a very feeble condition. 774

Q. What do you mean by family matters?

A. Well, I mean family matters—the house arrangement, and the conversation I have already detailed in relation to his troubles with his mother, or what he called his troubles with his mother.

Q. Then you think the excitement he was in on the first day, or the delirium, was caused by his feeling toward his mother, do you?

A. I have not stated that; no, sir; I think he was in

775 a very feeble condition—that he was very much afraid that he would not be properly taken care of, and that he had dwelt upon this matter until his mind had got into a very high state of excitement.

Q. Did you ever see his mother in the house there?

A. Yes, sir.

Q. Where did you see her there?

A. I saw her in the parlor.

Q. Did you ever see anything in her conduct or treatment towards Carlton that was improper?

776 A. Well, I saw her so little—I have seen them so little together that I could not—of course I always knew that Mrs. Gates had a very great affection for her son.

Q. Did you ever see anything on the part of Mrs. Gates that showed a want of affection for Carlton, or want of attention to him?

A. I was not there to observe it, besides she was not in charge of the house when I was there.

Q. Then you did not see it yourself?

A. I did not see it myself.

777 Q. And you had to depend entirely upon Carlton's statements?

A. Of course.

Q. And you assumed that what he told you about that was true?

A. I assumed nothing, I merely stated what he said to me; as I never saw them together, of course I could not say anything from my own knowledge of their relation.

Q. Carlton told you hard stories about his mother?

778 A. Nothing more than just that.

Q. Did not he tell you that she was neglecting him, interfering with his household arrangements, and that she did not treat him as she ought to?

A. I mentioned that—I mentioned just what he told me in that way, and I mentioned it merely as a part of his story.

Q. But you never saw any of those things yourself?

A. I was never there—I could not speak either way from that point.

Q. If you were never there when they were together 779  
you could say that you never saw them together?

A. Yes, sir, that is what I want to say, and that is  
what I have already stated.

Q. And you never saw anything on her part that  
would justify these remarks of Carlton's, or his feelings  
towards her?

A. No, sir.

Q. How many times did you see Mrs. Gates when you  
visited Carlton?

A. Well, I saw her the first time I went there, and 780  
probably three times.

Q. Three times altogether?

A. Yes, sir, I think so.

Q. Where did you see her?

A. I saw her in the parlor, and the last time on the  
piazza—when I saw her with Dr. Wood I saw her on the  
piazza.

Q. When did you see her there the last time?

A. On Saturday.

Q. The Saturday Carlton died?

781

A. No, sir; the Saturday previous to his death.

Q. Did not you see her on the day of his death?

A. No, sir, not at the house, but I saw Mrs. Gates  
several times at my own office.

Q. Was not she coming several times a day to your  
office to inquire about Carlton?

A. Oh, yes, I thought you meant at Carlton's house.

Q. I did not ask you when you met her there—but I ask  
you now whether she did not come to your office almost  
every day?

782

A. Yes, sir; I had made an arrangement to write her,  
but the reason I did not write her was that she came to  
my office and that rendered it unnecessary.

Q. Now, I would like you to explain why Carlton had  
that theory about his mother—what is your idea about  
that—if you did not see anything on her part to justify  
it, and if you only assume that it was true from what he  
said to you, I ask you in what way you account for his  
feeling towards his mother?

783 A. Well, to begin with, I have not assumed that it was true; I merely gave this statement as an index of his mind, and having that impression why he should have that feeling towards his mother.

Q. Did not you say that on the first day you went there you found him in that delirious state, and you attributed it to that feeling?

A. Very well; I say that he had that feeling; I did not say that that was my feeling.

784 Q. I want you to come to the feeling and account for that—you say the delirium was owing to that feeling—I want you to account for the feeling he had towards his mother?

A. I can only account for it by saying that I think the habits of the son and the habits of the mother were entirely opposed to each other—their habits of life and thought—that they were totally opposed to each other.

Q. And that they both could not get along there together?

A. Yes, sir.

785 Q. That feeling on the part of Carlton towards his mother continued down to his last breath, didn't it?

A. That I don't know.

Q. Well, as far as you observed?

A. No, I should judge not as far as any excitement was concerned; he spoke of his mother with perfect calmness when he alluded to her being in the house during the last week, and he could not have done that the previous week.

786 Q. Did not you tell Mrs. Gates repeatedly, down to the time of Carlton's death, that she must not go to the house—that her presence would be very injurious to him if he knew that she was there, and she must not go there?

A. Yes; I acted on his feeling as first disclosed to me.

Q. And you saw nothing in his conduct that would justify you in pursuing a different course?

A. No.

Q. Then you believe that this feeling on his part towards his mother continued down to his last breath?

A. Yes, I believe that he did not wish her to have 787  
anything to do with the arrangement of the house, and  
I should have been afraid to introduce the subject to  
him for fear it might excite him ; still, there was nothing  
to indicate that from anything he said after that.

Q. But you are not able to mention a single thing that  
Mrs. Gates did, that would justify this feeling ?

A. No, sir ; I could not, certainly.

Q. Did you ever talk with Mr. Hulbert about this  
will ?

A. No, sir. 788

Q. Did you ever say a word to him on the subject be-  
fore the will was executed ?

A. No, sir ; I did not know anything about the will  
whatever, and I knew nothing about it before it was exe-  
cuted.

Q. Did you ever talk with him afterwards about it ?

A. No, sir ; in the evening after the will was made out,  
I was called into the room, and Mr. Romer read one  
clause to me ; that was merely the clause requesting a  
post-mortem examination ; that was all I knew about it ; 789  
I knew nothing about the will whatever.

Q. Have you ever had any conversation with Mr. Hul-  
bert about it since that time ?

A. When Mr. Hulbert came after the examination, of  
course the thing was spoken about, but there was no par-  
ticular conversation in reference to it.

Q. How many times have you had a conversation with  
him about this will ?

A. Mr. Hulbert came to me on one occasion, to ask  
whether the chemist had sent in his report ; that was the 790  
first time.

Q. What did you tell him ?

A. That he had not sent it in.

Q. How soon after the death was that ?

A. That may have been a week afterwards.

Q. Well, when did you see him again ?

A. The next time, I think, was when—I am not very  
clear about that, but the next time I think was when I  
notified him that I had got it—I am pretty sure that I saw

791 him twice—it was in connection with the post-mortem examination.

Q. You notified him that you had the report of Dr. Doremus on this chemical analysis of Carlton's stomach?

A. Yes, sir; he wished to have it as one of the executors

Q. What did you notify that the result was?

A. I notified him that examination had been made, and no indications of poison had been found as I expected.

792 Q. When did you see him again?

A. Well, I saw him twice within probably a fortnight; I have not seen him now for a long time until I saw him here in Court.

Q. Do you wish to be understood as saying that you only saw him twice since Carlton died?

A. Since the funeral.

Q. Have you written him?

A. No; I wrote him simply on the matter of the examination.

793 Q. Have you received letters from him?

A. Yes, sir; I think I have one note from him.

Q. How many letters have you received from him?

A. One.

Q. Only one since then?

A. Only one since then; the will, I may state; is not a matter I took any interest in at all.

Q. Do you remember being spoken to on the Saturday about Carlton's condition by any one?

A. Do you mean the day of his death?

794 Q. Yes?

A. Yes, sir.

Q. By whom?

A. By Mrs. Gates.

Q. Where?

A. At my office.

Q. At what time?

A. It wanted then, about twenty minutes to three.

Q. What time had you seen Carlton?

A. I had seen Carlton about half-past twelve.

Q. On that day ?

795

A. On that day ; yes, sir.

Q. And in what condition did you find him in.

A. Well, I stated in my direct examination, that when I went there, in the middle of the day, that he was very much exhausted and he was sleeping, and I saw Mrs. Gates at my office about twenty minutes to three, and I told her that Carlton was much worse, and that I felt very much disappointed that Dr. Wood had not been up ; that if he was to see him alive again that I would wish to see him that evening.

796

Q. Did you then tell her to go for him ?

A. There was then a 3:20 train, and I thought that if Mrs. Gates went down, or sent down by that train, that in all probability we could get a consultation that evening.

Q. And you requested her then, to go down to New York for Dr. Wood, by the 3:20 train that day ?

A. Yes, sir.

Q. You had seen him then when ?

A. About half-past twelve.

797

Q. Did you then notice that the ends of his fingers were all black—turning dark ?

A. I did not.

Q. Didn't you notice then that he was actually dying ?

A. No, sir ; I did not notice that he was dying ; he was in a restless sleep.

Q. Didn't you understand, two days before, that his disease had taken a fatal turn ?

A. The night before, I knew one thing of course, that this disease was developing itself, but I didn't expect him to die so quickly.

798

Q. You knew that he was in a very low condition, and liable to die at any moment.

A. I knew he was in a very low condition, and I so told Mrs. Gates ; that if Dr. Wood and I were to have any further consultation, I wished to have it immediately.

Q. Did not you expect him to die at any moment ?

A. No, sir ; I did not expect it then.

799 Q. Did you not know that he was liable, in the condition he then was, to die at any moment?

A. No, I don't know it; the probability was that he might have lingered on.

Q. How long?

A. For days.

Q. Did you see Mr. Rose the day before?

A. No, sir.

Q. Don't you know that Mr. Rose stated publicly that he was dying the day before—on Friday?

800 A. No, sir, and he was not dying.

Q. Do I understand you to say that you didn't see on Friday that the ends of his fingers were becoming discolored?

A. Yes, sir.

Q. Did you look at his hand to see?

A. Yes, sir.

Q. And do you mean to say that there was no discoloration about the ends of his fingers?

A. No, sir.

801 Q. On Saturday morning?

A. I did not notice his fingers on Saturday morning because they were not out of the clothes.

Q. If they had been in that condition would not you have known that he was liable to die at any moment with the pulse at 140?

A. No, sir; not necessarily at that moment.

Q. How many times did you see Mrs. Gates at your house and at other places during the time that you were attending Carlton?

802 A. Well, I suppose, to take a rough guess, I might say about ten times.

Q. Did she request you to carry anything to Carlton to eat—any little dainty which she didn't want to carry herself?

A. Yes; I think she asked me the first day or two whether he might have some grapes, and she brought some for him.

Q. Did she understand that Carlton would not take them if he knew that they came from her.

A. No, sir ; I don't know anything about that. 803

Q. Didn't you and Mrs. Gates both act upon the supposition that Carlton would reject anything that Mrs. Gates sent him ?

A. No, sir ; not at all.

Q. Did not you know that Carlton's antipathy towards his mother was so great that it was not safe for his mother to visit him ?

[Objected to ; objection overruled ; exception.]

804

A. He certainly was very much averse to seeing her ; of course, that was the basis of my recommendation.

Q. And you didn't think it prudent for his mother to see him at all ?

A. I didn't think it prudent for his mother to see him.

Q. Did you ever see Carlton out of bed after the first visit you paid him ?

A. On the first or second day he got out of his bed and went as far as the hall to give some directions, I considered him then delirious, and he went immediately 805  
back to the bed again ; he was not out of the bed again from that time to my knowledge, at all, except, perhaps, for natural purposes, only on the morning I had him taken out of his bed and put on the chair by the window, but he kept his bed during the whole time of my attendance.

Q. For the last few days he was not out of his room at all ?

A. He was not out of his bed at all while I attended him except once when he was delirious ; that was the 806  
first or second day of my attendance.

Q. What would have been the objection to Mrs. Gates being in the lower part of the house during the time that Carlton was not able to leave the room ?

A. The only objection was, that he would find it out as he did subsequently ; and his state of feeling was such that if he found out that his mother was even in the house, that it would be dangerous ; and it was a dread of her being in the house and interfering with the arrangement.

807 Q. What arrangement?

A. The general arrangement of the establishment—interfering with the establishment, that was the source of his dread; I don't think there was any ill feeling apart from that.

Q. Did not he speak of his mother exercising a very injurious influence upon himself, upon his mind, and upon his health?

A. No; he didn't speak of that.

Q. Did he never speak of that?

808 A. No; not more than I related in my direct examination—he was very reticent.

Q. Did you see any interference on the part of Mrs. Gates with any of the household arrangements during your visits there?

A. No, sir; not at all.

Q. Carlton had the idea, very strongly, that he was poisoned, did he not?

A. Yes, sir; he seemed to have that impression.

809 Q. Did you tell him that you saw no symptoms of poisoning in his case?

A. I did.

Q. Did you satisfy him on that point?

A. No, sir; I don't think he felt satisfied; he said that he could not account for his symptoms on any other ground.

Q. Did not you tell him you could?

810 A. I could not, on that ground; I could not exactly understand the reason at the time of this peculiar derangement of the stomach, but I did my best to dissuade him from the idea that it arose from poison.

Q. You could account for the condition from the causes you saw?

A. I should attribute it to natural causes.

Q. From the disease?

A. Yes, sir; from his general disease.

Q. Is not it a symptom of insanity or monomania for persons to imagine they are poisoned when they are not poisoned?

A. Not necessarily.

- Q. Is not it a symptom, generally ? 811
- A. Not necessarily, by any means.
- Q. I don't ask you whether it necessarily is, but is not it very often a symptom of insanity ?
- A. Oh, it may be a symptom of insanity.
- Q. But is it not, in fact—have not insane patients a proneness to suspect that they have been poisoned ?
- A. In some instances.
- Q. In a great many instances is not it ?
- A. I don't know ; it depends entirely upon the circumstances connected with a special case of insanity. 812
- Q. Well, if there is no truth in the suspicion, and if a person perseveres in believing that he is poisoned, against the advice of his medical attendants, is not that a symptom of insanity ?
- A. Not necessarily.
- Q. It is consistent with the idea ?
- A. It is consistent with the idea ; if he was insane, it would undoubtedly be one of the evidences of it.
- Q. It is considered a badge of insanity, is it not ?
- A. Not of itself ; I mean to say this, that it must 813 depend upon other circumstances connected with it ; it is not, in itself, an evidence of insanity, but, taken with other evidences of insanity, it would be one.
- Q. Is not it an evidence of insanity for a person to suppose that everybody about him is trying to poison him ?
- A. That would be ; but that is not the question you asked.
- Q. If Carlton supposed his mother and father, and other members of the family there, were continually 814 trying to poison him, would not that be a strong evidence that he was insane ?
- A. I should certainly think it was a strong evidence of insanity.
- Q. You could account for it on no other hypothesis ?
- A. No ; I should consider it as a hallucination—form of insanity.
- Q. Monomania ?
- A. Monomania.

- 815 Q. Who was present with Carlton when he died ?  
 A. That I cannot tell you ; I was not there myself—I think, only the nurse.  
 Q. Nobody in the house but the nurse ?  
 A. The nurse and the ordinary establishment, that were there the whole time.  
 Q. Did you, on any occasion, have a conversation with Mrs. Nesbit about telegraphing to Doctor Gates' father ?  
 A. Mrs. Nesbit spoke of it on the Friday.
- 816 Q. Before he died ?  
 A. On the day before he died.  
 Q. What did she say ?  
 A. She said she thought that it would be well to telegraph to the Doctor ; I thought so too.  
 Q. And did you tell her that she had better send for him.  
 A. I did.  
 Q. Didn't you tell her that she had better not—that you thought there was no immediate danger, and that
- 817 when you thought there was danger you would tell her ?  
 A. Not after the Friday evening.  
 Q. Well, before ?  
 A. I don't think I expressed any fear before of any immediate danger, because I really had not any idea of any immediate danger.  
 Q. Wasn't she very anxious about Carlton, and did she not insist upon the sending for his father ?
- 818 [Objected to ; objection overruled ; exception].  
 A. I was of course perfectly willing that the Doctor should be notified, and I know that I talked the matter over with Mrs. Nesbit, and the difficulty was to know where to telegraph the Doctor.  
 Q. Did not Mrs. Nesbit insist upon telegraphing for him, and say that she thought that Carlton was in a very dangerous state, and did not you tell her that it would be time enough when there was more danger, and that you would let her know ?

A. Yes, sir ; but not later than Friday evening. 819

Q. Do you not know that she didn't telegraph him in consequence of what you told her then ?

A. That I cannot answer ; I don't know.

Q. Up to Friday afternoon you didn't suggest to her that there was danger enough to send for his father ?

A. No ; there was not more than there had been during his whole sickness.

Q. Did I not understand you to say, in your examination this forenoon, that you saw a very decided change for the worse on Wednesday afternoon, and that congestion of the lung was setting in ? 820

A. No, sir ; I said congestion was setting in, but it produced no particular change in his physical condition.

Q. Then his pulse was up to a hundred and thirty ?

A. No, sir.

Q. What was it then ?

A. It was not over a hundred and twenty ; it had been so all through.

Q. And on Thursday it was how much ?

A. On Thursday about the same—no difference—no 821 worse on Thursday.

Q. It was still a hundred and twenty on Thursday ?

A. Yes, sir.

Q. And then on Friday ?

A. On Friday morning the same.

Q. When did it become a hundred and thirty ?

A. On Friday it became a hundred and thirty ; that was on Friday evening, when the first symptom of danger appeared ; in his condition, he might, with that congestion, have lasted a great length of time, until the lung 822 broke up from consumptive disease.

Q. Have you had experience with consumptive patients ?

A. I have seen a great deal of it—a great deal of consumption.

Q. Are you not aware that it is a very usual thing for persons to desire to have their immediate relatives with them during their last hours ?

A. I am.

823 Q. Did Carlton ever express any desire to have his relatives by his bedside?

A. No, sir; or, of course, I would have immediately notified them; I always leave that to the families themselves, who know when there is danger.

Q. Who was there to leave it to then?

A. Himself; he was only to express the wish.

Q. And he didn't express the wish, and you did not make the suggestion that he should have his family there?

824 A. No, sir, from the very circumstance of my first attending him.

Q. For the reason that their presence would have been an injury instead of a benefit?

A. I don't think it would have been any injury after the first few days, but he did not express a wish to have them.

Q. Did you not tell Mrs. Gates that she must not go there?

A. He didn't express any desire to see her.

825 Q. Did not she express a strong desire to see him?

A. She did.

Q. Did not she express a strong desire to be permitted to go into the lower part of the house and say that she would not go in the room only to be near him?

A. I don't remember that there was any specification as to any part of the house, but the difficulty was as to her being there at all, although during the last week he didn't say anything about it, if he had expressed any wish to see her I should have told Mrs. Gates immediately.

826 Q. Don't you think it strange that a person in his state did not want to see his mother in his last moments?

A. I should think it remarkable for anybody; but so much depended upon their relations I formed no opinion upon the subject.

Q. Upon what hypothesis did you account for that feeling of his—that aversion towards his mother?

A. I stated that this morning.

Q. State it in this connection?

827

A. The feeling in regard to his mother was that she would interfere.

Q. Was that his feeling when he was dying?

A. Well, he might have retained that till the last moment.

Q. Did not that indicate that something was wrong in his mind?

A. Not necessarily.

Q. Was it consistent with the idea that something was wrong in his mind?

828

A. It would be consistent with the idea if there was other evidence beside.

Q. Leaving other evidence out of the case, and taking that fact, was not that consistent with the idea that he was not in his right mind when he did not wish to see his mother when he was dying?

A. Not necessarily.

Q. It was not consistent with the idea that he was not in his right mind?

A. I can only answer it in that way—not necessarily. 829

Q. You understand my question?

A. I don't mean to say that by that he acted rightly.

Q. I asked you whether his antipathy and aversion towards his mother, when in the very act of dying, was not consistent with the idea that he was not in his right mind?

[Objected to on the ground that this antipathy was assumed to exist when he was dying; objection overruled; exception.]

830

A. It might be consistent with it, but it was not in itself any evidence of it.

Q. (*By the SURROGATE*): Was it a fact?

A. Well, he made no allusion to his mother at all.

Q. Was it a fact?

A. I say I don't know the fact, and therefore cannot answer the question.

Q. How did you then without his making allusion to

831 his mother—how did you come to take the responsibility to yourself to advise her to keep away from his dying bedside ?

A. During the last week there was no question about it ; I neither asked her to go away or to come there ; I had nothing to do with it for the last few days.

Q. I understand you that during the last week of his life you did not ask his mother to keep away from him ?

A. Not that I recollect.

832 Q. You made no such request, or gave no such indication to her ?

A. Not after the first week, after the thing was all arranged, I don't know that that question came up again ; I saw Mrs. Gates almost every day, but as far as I know——

Q. But you never advised her to keep away because it would endanger him after the first week ?

A. Not that I recollect.

Q. Who did advise her ?

833 A. I cannot say about that.

Q. You did not ?

A. No, sir.

Q. And you don't know who did ?

A. I should if she had asked me, until he requested that she should come there, I should undoubtedly have asked her to remain away, because I should have thought it might probably have an injurious effect upon him.

Q. You saw he was going to die didn't you—you knew from your experience as a physician that a person in his condition could not live ?

834 A. I did not suppose that he would live, but at the same time I did not expect him to die so soon.

Q. When did you expect that Mrs. Gates would have an opportunity to visit him ?

A. I had nothing to do with that.

Q. It was not in your professional duty to bring relatives together when one was about to die ?

A. I always leave that to the surroundings ; I merely post them as to the condition of the patient.

Q. Who were the surroundings in that the person to whom you made your report? 835

A. The person to whom I made my report was Dr. Hulbert.

*Re-direct examination by Mr. LYON:*

Q. The counsel has spoken to you about this suspicion of poisoning, and has suggested a case in which everybody about him was going to poison him, and wanted to know whether that would not be an evidence of insanity; suppose these suspicions were spoken of by a patient while he was suffering under a disease as you found him the first five days, and he thought that the various persons about him were disposed to poison him—would that be any evidence of any general insanity of the patient, or would it be one of the effects of his disease? 836

A. I should regard it as the effect of disease, because he was generally delirious, and talked wild on all points.

*Re-cross examination, by Mr. VAN PELT:*

Q. Those symptoms continued down to the time of his death? 837

A. No, sir; I did not say that.

Q. Did you see any change in those symptoms?

A. About the tendency of his stomach.

Q. No; what he told you about being poisoned—you said you could not change his idea that he had been poisoned—did you say that he continued in the opinion that he was poisoned?

A. I did not ask him, but I heard he became doubtful about it the last week, but sometimes he was not satisfied. 838

Q. Don't you know that his mother was one of the persons he charged with having poisoned him?

A. He did not speak of his mother to me; he did not speak about any of his family in connection with it.

Q. If you had heard that he thought it was his mother who had poisoned him, would not that account for his antipathy towards her?

A. Yes, sir.

839 Q. And if he had no cause for believing that, would not that show that there was something wrong about his mind?

A. Yes, sir.

Q. (*By* Mr. LYON): This poisoning conversation took place in the first week?

A. Yes, sir.

Q. After the Monday you referred to, there was no reference to the subject of being poisoned?

A. No, sir; no reference to the subject or to the family.

840 Q. (*By* Mr. VAN PELT): I will ask you whom Carlton told he thought had poisoned him?

[Objected to.]

Q. You stated on your direct examination, that he told you it was somebody—not his parents—now I ask you who it was.

[Objected to; objection overruled; exception.]

841 A. I think I have a right to object to answering that question; it was merely a statement, wrung from him by the necessities of his case, and merely a matter of professional confidence, and the name was not mentioned; he mentioned the circumstances but not the name.

Q. It was not yourself?

A. It was not myself or any member of the family.

Q. And it will not criminate you?

A. Yes it will, because it was a matter connected with his own affairs purely, and such a statement as was only  
842 wrung from him by the necessities of his case; it was in relation to some person he was connected with.

Q. Come right to the name?

A. He did not mention any name.

Q. Whom did he mention?

A. Well, if I am obliged to state it—I do object to stating it decidedly.

[Mr. LYON again objected; objection overruled and the witness directed to answer the question; exception.]

*Witness* :—Well, the conversation then was to this 843  
 effect: he had some quarrel with a person who had  
 formerly been his mistress—some fixed up trouble be-  
 tween the husband, the mistress, and the brother of this  
 woman, and that he had a personal interview with them;  
 that during that interview that they had a very angry  
 and excited interview, and that he had partook of some  
 cake; I don't recollect whether he partook of some wine  
 also, but he partook of some cake; he said he did not  
 know exactly what he was doing at the time, but he had  
 never felt right since that interview; very angry words 844  
 passed between them; threats passed between them;  
 that was all he could recollect about it, but from that  
 time he had suffered from this stomach affliction, and had  
 been under the impression that some poison had been  
 administered to him; that is all of it; he did not men-  
 tion any name, and I know nothing of the parties.

Q. He told you that while he was in that delirious  
 state which you have described?

A. Yes, sir.

Q. Did you regard it as the talk of a man who was not 845  
 in his senses and did not know what he was about?

A. I did, to a certain extent.

Q. Did he designate that person?

A. He did, not by name.

Q. Did he in any way whatever?

[Objected to.]

*The SURROGATE* : Let him give the conversation.

A. Well, I have given the whole substance of the con- 846  
 versation.

Q. I want the designation he gave you?

A. He didn't give me any name whatever.

Q. Give me the designation he gave you of the  
 person?

A. Well, I have given you the conversation, and all  
 that he stated to me to account for his having that  
 feeling.

847 Q. Do you mean to say that he mentioned no person whatever, so that you could understand what person was intended?

A. I certainly did not understand it—I knew nothing of the party whatever.

Q. Give us all the conversation?

A. Well, that is all the conversation—he just told me in that way.

Q. He mentioned no name, or indicated the person in any way?

848 A. He mentioned no names, or gave me the slightest idea who the persons were.

Q. Did he mention the husband's name?

A. No, sir; he never mentioned any names whatever.

Q. And you never learned from him who the person was?

A. No, sir; I merely stated to him that I thought his impressions were all wrong; that his symptoms could be accounted for entirely without any reference to poison; that I did not believe he had been poisoned; and there

849 it ceased.

Q. When and where did he tell you he had eaten this cake?

A. That he didn't tell me—in New York, somewhere.

Q. When?

A. As I understood him, it must have been some two or three months previous to his disease; he did not state the exact time; he said it was a considerable time ago.

Q. Did he tell you in what house he had eaten it?

A. No, sir; I have no more idea of the parties than

850 —

Q. On what day was that?

A. I think it was on the Friday.

Q. Friday of the first week?

A. Of the first week—I am not quite certain as to the day; I know that it was during the first week, within the first two or three days of my attendance.

Q. And he never alluded to it afterwards?

A. He never alluded to it again.

(Signed) EDMUND S. F. ARNOLD.

Dr. JAMES R. WOOD, being duly called on behalf of the 851  
proponent, and affirmed by the SURROGATE, was examined by Mr. LYON, and testified as follows :

Q. You are a physician, practising medicine in the city of New York?

A. I am.

Q. For how long a time have you been practising medicine?

A. Since 1837.

Q. Did you know Carlton Gates in his lifetime?

A. I did. 852

Q. When did you first become acquainted with him?

A. Some twenty odd years ago.

Q. What relation did you hold to him?

A. He was a pupil of mine.

Q. How many years did that relation continue?

A. I have known him ever since.

Q. Have you been on intimate terms with him since that time?

A. I have seen him frequently, sir.

Q. When did you first see him in his last illness? 853

A. He had been sick since last Spring; I think his last sickness dates from that time; I saw him—I saw him with Dr. Upham—it was in March, on March sixteenth, I think, of the present year, that I saw him with Dr. Upham.

Q. At his house in Yonkers?

A. At his house in Yonkers, sir.

Q. What were his symptoms then?

A. He had pleura pneumonia; he had inflammation of the lungs and of the pleura; he had consumption; he 854  
had tubercles in his lungs for a number of years—a long while, sir; I sent him to Europe some years ago, because of his pulmonary trouble; I then saw him occasionally after this at my office; I saw him with Dr. Upham in the Spring, and I saw him previously in March, previous to the visit with Dr. Upham on the fifth, and directed him to go home and send for his physician; the next I heard from him was on the sixteenth; then I saw him at my house again in April, about the

855 wenty-eighth, and I saw him in May the eighth, twenty-fourth and twenty-seventh, and so on until his last illness; he came to see me, sir; after returning from Newport on the seventh of August, I found him in a very bad condition; his tubercles were softening; he had more or less pleurisy—well, he had some puenemonia, what we call “intercurrent puenemonia,” that is inflammation occurring about the part where the disease was progressing, and there was a cavern in one of his lungs, that is a cavity containing pus; I heard from him through  
 856 his mother shortly after; she came to me with a note stating that he was very ill, and I prescribed for him, saying that it was difficult to do so; that he should consult his medical adviser; I think she got the prescription, and took it to him on the twelfth of August; his mother came to me again, and I visited him in consultation with Dr. Arnold, and then attended with him; do you want me to give my——

Q. State the condition in which you found him—in which the disease was?

857 A. I found him very weak and very feeble; his pulse quick—he had fever—hectic, nervous fever; he was very much excited, and what has been called “delirium,” obtained; that is, he was wandering more or less, because of his disease, and perhaps some other circumstances, which I do not care to talk about, sir—domestic affairs—which have been talked of sufficiently probably, but that they did excite, there is no doubt about it; that they were having their effect upon this young man; he was prescribed for, and before I left I saw his mother; it was  
 858 his request that his mother should not see him or remain in the house; his reasons for wishing her to be absent, have been given by other witnesses; I talked with his mother, probably, in the cars; I don’t remember whether I saw her there that day or not; I stated to her what Carlton had requested, and she said very well; she would not go there I think; she went to town in the same cars with me; I know that she did on two occasions that I was visiting Dr. Gates, come to town with me when I left; the prescriptions were made, the direc-

tions given, and I saw him again on the fourteenth; he 859  
 was about the same; he had a great deal more fever;  
 there was a great deal of excitement, though he did not  
 wander, yet he did not talk as he was wont to talk, sir;  
 he was a highly educated gentleman, and his conversa-  
 tional powers were good, but he was very much depressed,  
 suffering fearfully from want of breath, for his lungs were  
 doing very bad service; he was wanting oxygen—it was  
 a very natural want—and it was difficult for him to breathe;  
 he talked in monosyllables a great deal of the time, so  
 much pressed was he for breath; he wanted to know if 860  
 he was going to die; I had told him repeatedly that he  
 had tubercles, and the time would come—the end would  
 come; that he knew enough of medicine to know that a  
 man who once had tubercles to any extent, would  
 probably die from their effects, either directly or indi-  
 rectly, and I cautioned him with reference to it—merely  
 referred, in a quiet way, to what I had said to him—and  
 that he should be careful and be composed, and not allow  
 anything to worry him; that his domestic affairs must  
 not be thought of, and that everything was right; I asked 861  
 him whether he had anybody to look after him; I think,  
 for the first time, I then saw Dr. Hulbert; he said that  
 he had sent for that gentleman, or had written for him;  
 that he was an old and dear friend of the family, and he  
 would take care of him; a nurse was directed to be ob-  
 tained; he required one he was so very ill; it required  
 some one to be with him constantly, as his relatives could  
 not from circumstances stated, administer to his wants;  
 he said: “If I am going to die, if I cannot get well, I  
 want to make my will;” I said to him: “You are not in 862  
 a condition to make your will; why do you want to do  
 it;” “Well,” he said, “I wish to make my will;” “You  
 must wait, you should not make your will now,” I said:  
 “Well, I am going to do it;” I told him he was not able  
 to do it; he said then, “I will make my will when you  
 say I am able to do it, and I wish to make you one of  
 the executors, sir, and Dr. Hulbert is going to be the  
 other; I am giving you, now sir, all I know about the  
 matter; perhaps I am saying too much.

863 Q. Go on ?

A. He said to me : " I will consider it a great favor if you will act as executor ;" I said to him : " You know I am a busy man ; I have not the time to attend to other people's business ; I prefer not to ;" he again insisted ; he said : " You must do it ; I want you to act ;" I said : " I will do it, as you wish me to ;" he said : " I am going to leave you my cabinet and my library and my pictures ; I want you to have them ;" he was prescribed for ; I do not know, whether it was on that day or not, but his  
864 stomach was troubling him greatly, and he whispered to me : " Is not it poison that I talked to you some months ago about that is doing this?" his tongue was coated some, and he had a bilious stomach ; he had vomited a little ; we agreed to give him something to act upon the liver ; it was at that time, I think, that I ordered a little calomel, and it had the desired effect ; other means were prescribed ; I saw his mother on the way to New York, and told her that the Doctor was about the same—perhaps, a little better—that he was a little more composed ; and I  
865 told her, about the will, what he proposed, and asked her whether he had much property ; I asked this with a view of acting as his executor, because I had not time or inclination to attend to it ; she said that he had not very much—that she did not know why he wanted to make a will ; I told her that I did not know ; she said that he had made a will ; I knew nothing about that, of course ; I knew nothing about his property.

Mr. LYON : I do not know whether it is proper for  
866 you to state what took place between Mrs. Gates and yourself.

*The witness :* Very good, sir ; I then saw him again on the sixteenth, which was Monday ; I found the Doctor in a very different state ; he was calm, cool, deliberate—talked freely and feelingly ; he felt that he had to die, and wanted to know if I thought he could possibly live long ; I avoided the question, and said some pleasant things to him, and endeavored to console him in this way,

saying, that he knew he had a disease—of which he had 867  
 been very sick before, and had gotten better—that he  
 had a right to look for death a good many years ago, and  
 so on; well, I left him in a very comfortable state of mind;  
 he was better; he was perfectly rational, so far as I could  
 see; he was weak; he was sinking; the disease was  
 making progress; he had now more intercurrent pneu-  
 monia—congestion and pneumonia; I made a physical  
 examination; I discovered the cavity I had before dis-  
 covered in his lungs, but his lungs were filled with what  
 we call miliary tubercles—small tubercles; I left him; 868  
 he was better; he was more composed—I mean by  
 better, that he was more composed, but that the disease  
 was taking its course—it was going on to destroy him;  
 on the nineteenth, Thursday, I saw him again; he was  
 cheerful, comparatively speaking, and talking quite  
 freely—referred to some of his student days, and we  
 had a pleasant talk, but yet he was very feeble; I should  
 say, that, before my seeing him, he had refused to take  
 food, and would have died, probably, in a very short time  
 —he would not have lived as long as he did, in other 869  
 words—but he was induced to take nourishment; and,  
 although he did not desire it, we showed him it was a duty  
 that he owed to himself—that he had no right to sink  
 away for want of proper nourishment.

Q. That was during the first week?

A. Yes, sir; I did not see him after Thursday, the  
 nineteenth.

Q. During that day, did you see him in consultation?

A. I saw him each day I was there in consultation  
 with Doctor Arnold; I was to have seen him on Saturday, 870  
 but I was called away from the city, and on Monday I  
 received a note from Doctor Hulbert stating that he was  
 dead, and that he wished me to come to Yonkers; that  
 I was an executor, and that I was a legatee; this was the  
 first time I knew of his making a will; that is all, sir.

Q. Well, sir, on that Thursday, what time in the day  
 was it that you saw him?

A. It was about noon, between twelve and one  
 probably.

- 871 Q. You were there about an hour ?  
 A. An hour ; I took the first train down.  
 Q. You had a full consultation with him on that day ?  
 A. Yes, sir.  
 Q. What was his mental condition, as to making a testamentary disposition of his property ?  
 A. He appeared to be as rational as I ever saw him ; so he did on my previous visit.  
 Q. During that week, was there any time at which, in your judgment—  
 872 A. I only saw him twice, sir—on Monday and Thursday.  
 Q. On both these occasions his condition was satisfactory ?  
 A. Yes, sir.  
 Q. Would you have hesitated to witness a will for him ?  
 A. I could not have refused, sir.  
 Q. In the last few months of his life did you discover any change in his habits in regard to drinking, or the use of alcoholic liquors ?  
 873 A. I do not think Dr. Gates was an intemperate man ; he was of feeble frame ; he had a disease that was progressing to destroy him, and a very small quantity of wine or alcoholic drink affected him badly ; I think the last time I saw him at my office which was on the 7th of August ; he had been drinking something, and I reckon it was the occasion that was referred to about his taking some brandy and water at the Hoffman House ; he was very feeble, and he did take liquor occasionally ; there is  
 874 no doubt about that, but I did not think he was a drinking man.  
 Q. But liquor did, when he did take it, affect him ?  
 A. Yes, sir.  
 Q. In consequence of his condition ?  
 A. Yes, sir, it affected him badly, and a very little would produce an affect upon him ; in reference to his being poisoned at the time that Dr. Upham and myself attended him, that question was brought up there ; this poisoning, as he supposed, took place previous to that.

*Cross-examined by Mr. VAN PELT :*

875

Q. You alluded to the family difficulties that Mr. Carlton mentioned to you—did he tell you what the nature of these difficulties were?

A. He has told me, from time to time, that there were family troubles between his father and himself.

Q. Not between his mother and himself?

A. He, on one occasion, now within a short time, did talk to me in reference to his mother.

Q. When was that?

A. I saw him in February, March, April, May, July and August; I saw him in all these months; I cannot tell you when it was—perhaps a month or so before he died. 876

Q. What was the first you heard him say against his mother?

A. He did not say anything against his mother; he said this: "That my mother is feeble in frame, and her mind is becoming weak, and it is impossible for me to keep my affairs together; I think that she is insane."

Q. That is what he told you?

877

A. Yes, sir; says he: "I would like to have you to go and see her; I would like to have you and Upham see her;" I told him: "Do you suppose I would go to your house and examine your mother, sir, with reference to sending her to an asylum?"—he wanted to send her there.

Q. What did he say to that?

A. He said there was no doubt of her being insane.

Q. And he wanted you to go to the house to make an examination?

878

A. He wanted me to examine her with reference to her sanity.

Q. For the purpose of sending her to an asylum?

A. He did, sir; he believed that she was insane, and that she ought to be in an asylum.

Q. Had he been drinking on that occasion?

A. I don't remember; I think not.

Q. He was perfectly free from the influence of liquor then?

879 A. I think he was.

Q. And he spoke of the subject of his mother's insanity as if he had no doubt of it at all?

A. He said that he felt that she was insane.

Q. Did he tell you in what way he acquired the idea that she was insane?

A. Well, it was in reference to her general—to the manner in which she conducted her domestic affairs.

Q. How long had you known Mrs. Gates?

880 A. I suppose twenty years—I don't know—perhaps so—I do not know as it is so long as that, yet it is twenty years I think since Carlton Gates was in my office, she will remember the time—I do not remember the time exactly, and I think I have seen Mrs. Gates occasionally from that time to the present, or some of her family—I know most of the family.

Q. Was that the first time you ever heard she was insane?

A. I do not think I ever heard she was insane before.

881 Q. You only heard it from him, then?

A. That is all.

Q. Did he say who else he wished to examine her with a view to having her put into the asylum?

A. No, sir; he asked me if I would not meet Doctor Upham.

Q. Did he say that he had ever spoken to Dr. Upham on the subject?

A. He did not; that is all he said.

Q. Was his manner natural at that time?

882 A. Yes, I think so.

Q. Just as natural as when you saw him on the Monday, and on Thursday when he made the will?

A. I do not remember about that, I know he was feeling very badly about his family affairs; he said that he was alone in the world.

Q. He talked just as rational about other matters on that occasion when he wanted his mother put in the asylum, as he did on the Monday and Thursday before he died?

A. I think he talked about the same, sir.

883

Q. You are satisfied that he was not under the influence of liquor?

A. I think he was not—I do not remember that he was.

Q. How long had you been to the Gates' residence, in Yonkers, before that time—before March the first, when he told you that she was insane?

A. It was not then, sir, it was after that.

Q. Well, before that, then, whenever it was?

A. I do not remember, I may have been at the house before—I think not but once, it is so many years ago when I was in Yonkers.

Q. Did you ever see anything on the part of Mrs. Gates that would justify such a conviction?

A. Oh, I know nothing about it—I told him—I said to him that I knew nothing about it.

Q. During all the intercourse you have had with that family, or Mrs. Gates, did you ever see anything to justify such a suspicion?

A. Oh, I never saw anything to justify the believing that she was crazy.

885

Q. If Carlton had the idea that his mother was insane when she was not insane, and there was no cause for such a suspicion, on what principle would you account for that idea?

A. It is hardly a supposable case that any man, without any cause, would suppose another insane.

Q. It can only be accounted for by supposing that there was something wrong about him?

A. It may have been.

886

Q. It is not a usual indication of insanity for an insane person to believe others are insane and he is sane?

A. It is not very apt to be the case.

Q. When you saw Mrs. Gates at the depot did you tell her that Carlton was making his will?

A. I did—I have said that.

Q. Did you tell her?

A. I did not tell her he was making a will, I told her that he said he was going to.

- 887 Q. Did you ask her what property he possessed?  
 A. I have already stated what I said to her.  
 Q. Is that all?  
 A. Yes, sir.  
 Q. You did not ask her what the property consisted of—whether the library belonged to him and the furniture in the house?  
 A. I do not remember anything about that.  
 Q. You do not remember whether you did or not?  
 A. I do not.
- 888 Q. Did Carlton tell you that he was going to make Mr. Hulbert a legatee?  
 A. He did not; all that he said to me in reference to Mr. Hulbert was that he wished him to act as an executor.  
 Q. But Carlton told you that he was going to give you his library and curiosities?  
 A. He said to me that he was going to give me his paintings, cabinet and library.  
 Q. How many times were you at the house the week before he died?  
 A. I was there four times in all.
- 889 Q. Two, the week before he died?  
 A. Yes, sir; the dates I have given you; if you wish I will read it; I was there on the 12th, 14th, 16th and 19th.  
 Q. On any of the occasions did you see Mrs. Gates or Mrs. Nesbit, and tell them that Carlton "was crazy and should go to the lunatic asylum?"  
 A. No, sir; I will tell you what passed between us if you please.
- 890 Q. If you please?  
 A. When I said to Mrs. Gates——

Mr. LYON: When was it?

A. I cannot tell the date it was at the time he proposed to make me legatee, I told her what he wanted to do—this was to Mrs. Gates—I do not think I ever saw Mrs. Nesbit until after his death; I told Mrs. Gates that he proposed to make a will, that he proposed to make

me a legatee and executor; she says, "Don't you think 891  
 Carlton is crazy?" "Well why do you think so," I said;  
 she said, "I think he is crazy;" "Well, now, Madam,"  
 said I, "he thinks you are crazy;" well, I don't remem-  
 ber what else transpired; I do not think anything else  
 did.

Q. Didn't you tell her that Carlton was crazy and  
 should go to the lunatic asylum, and didn't she tell you  
 you had better suggest that to him?

A. He wanted me to suggest that to her.

Q. Did you not then say that you would not do it, for 892  
 he would shoot you?

A. No, sir.

Q. Nothing of the kind?

A. No, sir; why do you presume that I could say such  
 a thing, sir.

Q. I wanted to know whether you did or not?

A. No, sir; I did not.

Q. For the reason that I am going to contradict you  
 and show that you said so?

A. I never said so.

893

Q. Well, that is my object in asking you—you asked  
 why I asked you the question?

A. I want to say this—that I was truthful and very  
 careful in what I said to Mrs. Gates; I was very honest  
 in what I said to her—I told her the whole thing; I told  
 her I thought it was right she should know that he  
 wanted to make a will; for that reason I told her, and I  
 have stated to you the reason that I asked her if he had  
 much property, that I did not wish to involve myself in  
 an undertaking I could not attend to—that was the rea- 894  
 son, sir; and Mrs. Gates knows my object in doing it.

Q. She did not tell you what property Carlton had?

A. Oh, no, sir, she did not; I reckon she was a little  
 suspicious that I wanted to get his property.

Q. Hadn't she cause to be a little suspicious?

A. No, sir; nor you either if you knew me.

Q. You have got it?

A. No, sir; I don't want you to throw out any insinu-  
 ations of that kind to go into the public prints—that I  
 would do such a thing.

895 Mr. VAN PELT : I don't want to hurt your feelings.

*The Witness :* I don't want any insinuation for I am as clear in this thing as any man that ever lived.

Q. I don't want to discuss the thing with you, I only asked you this question ?

A. Well, I have answered you.

Q. Then I understand you that you did not at any time, or to any person, say that Carlton was insane, and that he should go to the lunatic asylum ?

A. No, sir.

896 Q. And that you would not make the suggestion to him for fear that he would shoot you ?

A. Oh, no, I don't think I ever made use of anything of the kind—I could not have done it ; if I had I think I should have remembered it.

Q. During the first week I understand you to say that he was clearly not in a condition of mind to make a will ?

A. He was not in my judgment ; I advised him not, and I advised Dr. Arnold in regard to it.

897 Q. But at that time he suggested giving to you this library and this collection of curiosities didn't he ?

A. He did.

Q. When he was not in a condition to make a will.

A. He did.

Q. He afterwards carried out the intention ?

A. Yes, sir.

Q. When you say he was in a better condition ?

A. That was my opinion as a professional man.

898 Q. Now what change took place in his mind between the time he was not in a condition to make a will and the time he was.

A. I know nothing about the matter, except what I have told you ; it was never referred to again ; I did not know he had made a will.

Q. How did his mind improve ?

A. I have told you that he was delirious previous to this Monday ; he was as sane afterwards as you are.

Q. You mean that he talked rationally ?

A. He did.

Q. And showed that he had a good memory, and 899  
seemed to understand himself.

A. He did.

Q. At that time did he seem to have a strong antipathy  
against his mother?

A. He said nothing to me about his mother.

Q. Did he say that he had changed his conviction as to  
his mother?

A. He said nothing about her.

Q. Did not you tell her, down at the depot, that Carl- 900  
ton said she was insane?

A. That was the first week; you cannot cannot confuse  
me on this cross-examination; put it to me straight.

Q. I intend to.

A. I have told you that it was the day he proposed to  
make a will that I talked to that lady.

Q. Well, the second week—when you say he was in a  
condition to make a will?

A. That is my opinion.

Q. Did you talk with him and find out what his feel- 901  
ing was towards his mother?

A. No, sir.

Q. You never mentioned it?

A. I did not mention her name, nor did he; I had  
never thought anything more about the will.

Q. If a week before he died, or some time before  
he died, he thought his mother was insane, when, in  
fact, she was not insane—would not that be a badge of  
insanity on his part?

A. It was not a week before; a good while before.

Q. How do you know that he did not have the same 902  
monomania towards his mother, when you say that he  
was in a condition to make a will on the Monday and  
Thursday?

A. I have said nothing about monomania.

A. I understand you to say that it was a badge of in-  
sanity?

A. I did not; I said that Dr. Gates was delirious.

Q. I am not on delirium now?

A. Well, I am not on insanity now.

- 903 Q. Well, I am going to get you on insanity if I can?  
 A. Well, I know you are trying very hard, but I shall tell you what I think right, professionally, as between gentlemen.  
 Q. We will go back again ; I ask you if it is not a badge of insanity, for a person to suppose another insane who is perfectly sane?  
 A. When it is proved that that person is sane, then it is time to answer that question.  
 Q. I am asking you a hypothetical question, assuming  
 904 the person who is thought to be insane is perfectly sane, isn't it a badge of insanity for another person to believe that that person is insane?  
 A. Not necessarily sir.  
 Q. Is it consistent with the idea of insanity?  
 A. There are a great many things you can ask on abstract questions.  
 Q. I want an answer to an abstract question?  
 A. You can take the text without the context, and make a very different thing of it.  
 905 Q. Answer this question ; I want you to answer whether it it is not consistent with the idea of or presence of insanity?  
 A. There are circumstances which would make it so.  
 Q. It is not quite usual for insane patients to imagine they are sane, and that others are insane?  
 A. It is.  
 Q. Very usually?  
 A. Yes, sir.  
 Q. What examination did you make of Carlton Gates'  
 906 mind to ascertain whether his mind was in any different state on Monday and Wednesday of the second week, to what it was the week before?  
 A. He never referred to his mother after he decided, and she said it was best herself for her not to be there.  
 Q. Then, for all you know, he still thought his mother insane?  
 A. I know nothing about that.  
 Q. What did he say to you about this poisoning.

A. At the time Dr. Upham and myself saw him, he referred to it ; he had talked with Dr. Upham previous to my seeing him in reference to it ; after he got about, we assured him there was nothing of the kind—no symptoms of poison ; after he got about, he came to see me and said : “ Doctor, are you sure I am not poisoned ; could it be “ that some corrosive poison has been received into my “ stomach, and that I am now feeling, or have been “ feeling the effect of it ; would not that account for my “ symptoms excluding the lung trouble ; ” he did not want to believe, as I or you would not, if we had tubercles in the lungs, that they were there ; he did not ; he wanted to account for his trouble in any other way ; I said to him ; “ You are not poisoned, and never have been poisoned ; ” he said, “ I may have been poisoned ; ” I said : “ Why do you think so ? what are the circumstances ? do you suspect any of your family ? ” “ Oh, no,” says he, “ none of my family ; well,” says he, “ there is a person not a bit too good to kill me—poison me ; I ate or drank (I do not remember which), in the house of some person ; ” I asked him : “ Some female—some woman affair ; ” he said : “ Yes, and I felt sick afterwards, and it gave me the impression that I might have been poisoned ; I do not know whether it is so or not ; I have confidence in you ; but,” says he : “ I have got that impression, and it is hard to get rid of it ; ” “ well,” says I, “ Carlton, you are not poisoned ; the party may not have been too good to poison you, but there is no poison in you —there is nothing indicative of any kind of poison, mineral or vegetable ; ” “ well,” says he, “ I will try to think otherwise ; ” that is all there is about the poison as far as I know. 907 908 909 910

Q. If Carlton had the conviction that he was poisoned, when there was no ground for believing that he was poisoned, and persevered in that conviction down to the time he made his will, would you regard that as showing any derangement of his mind ?

A. He gave me the reason why he thought so that this female had done it.

Q. I don't want to go into that ; I ask you if Carlton,

911 under the conviction that he had been poisoned, without any grounds to justify it, persevered in that conviction down to the time he made that will, whether that would indicate that there was anything wrong about his mind?

A. It would ; but he thought he had evidence of the fact.

Q. If he had thought that his mother and father had poisoned him, and other members of the family had poisoned him without regard to this woman, and had persevered in that conviction, I understand you then to say  
912 that his mind was deranged ?

A. I should think so ; I understood Dr. Gates so well that if he had thought they had poisoned him, without some cause for the suspicion, I should have believed he was acting under insanity or something else.

Q. Don't you know that he had that idea down to the time of his death ?

A. No, sir ; he told me that he never had that idea.

Q. What idea ?

A. That his parents, or any member of the family, had  
913 poisoned him.

Q. Did you ever hear of it from him ?

A. No, sir ; I asked him distinctly whether he ever had such an idea, and he told me " no ; " he laughed at the idea, and then he told me of this woman.

Q. And that was the only person who was mentioned in that connection ?

A. Yes, sir.

Q. If he had told you that his father or mother, or any of his relatives had poisoned him, then you would have  
914 thought there was something the matter with his mind ?

A. Yes, sir : I would have told him so.

Q. There can be no doubt about that ?

A. Yes, sir ; there might.

Q. No reasonable doubt ?

A. Yes, sir.

Q. Specify ?

A. If you had been inimical to me for a long time, and if I felt that you were hostile and cruel and you were not my friend, a man may, from the effects of long continual

treatment of that kind, imagine a great many things, and 915  
the law would not consider him crazy because he did.

Q. Whom do you apply that to ?

A. Nobody.

Q. Do you apply that to Dr. Gates ?

A. No, sir.

Q. Do you apply it to Mrs. Gates ?

A. No, sir.

Q. Whom do you apply it to ?

A. Nobody.

Q. Then why do you mention it ?

916

A. I mention it—a case of that kind.

Q. One moment ; do you know that any of these conditions existed in his case ?

A. I have heard so.

Q. Who from ?

A. Well, I don't wish to mention names.

Q. I insist upon it.

A. Well, I heard it from the counsel here to-day ; I heard it from Mr. Lyon.

Q. I insist upon hearing it from you, now ?

917

A. I heard that this had been the case at home between him and his parents.

Q. His father and mother ?

A. His father.

Q. Did you hear it as to his mother ?

A. No, sir ; I should have said parent.

Q. Then the condition would not exist in the case of his mother ; and, if he thought his mother had poisoned him, how would you account for that ?

A. There is no supposition of the kind anywhere.

918

Q. How could you have accounted for it, if he thought his mother had poisoned him ?

A. It is a thing so preposterous, that I don't think the question ought to be answered.

Q. You would think he was out of his mind ?

A. I would think there was something the matter with him, or something had transpired to make the man beside himself.

Q. Have you much experience in treating insane patients ?

919 A. No, sir; I have had some, but that is not my specialty, sir.

Q. Do you profess to be an expert on that subject?

A. No, sir.

Q. Not at all?

A. No, sir; if you want to talk about surgery with me I am ready to talk with you.

*Re-direct by Mr. LYON:*

920 Q. In the course of your practice, you have treated insane persons and do?

A. I have, as other general practitioners, but surgery is my specialty.

Q. You have been in practice since 1837?

A. Yes, sir.

Q. And in general as well as in special practice?

A. Yes, sir.

Q. (*By Mr. VAN PELT*): Who was the person that was designated by Carlton as the woman who had poisoned him?

921 A. He did not tell me.

Q. Either by name or otherwise?

A. No, sir; he did not indicate who the person was only that he had reason to suspect that the person was not too good for it.

Q. (*By Mr. LYON*): Supposing that, the time you first saw him in the condition that he was from the disease that he had then spoken of, his mother poisoning him, would that have indicated any general insanity in his mind, or would it have been the result of the disease he was laboring under?

922

A. No, sir; he might have said anything at that time.

Q. Without indicating any insanity?

A. Yes, sir; I do not consider that he was insane, in the acceptance of the term "insanity;" he was as sane as you would be if you had a fever.

Q. Producing the same results?

A. Yes, sir.

Q. With the fever that he was suffering from, was it natural for him to develop in that way?

A. Every intellectual man, when he has a fever, is very apt to be "luny," sir. 923

Q. From your long acquaintance with him, during his life, was there anything to induce you to believe that there was any insanity about him?

A. No, sir.

Q. Did you ever have any suspicion of it?

A. No, sir.

Q. Upon that occasion, that he communicated to you that he thought his mother was insane, did he not give you the reasons upon which he based that opinion? 624

A. A great many; I do not like to talk about it.

Q. If they were true—the statements he made, in regard to the effect upon his household and his habits of life, produced by the person of whom he spoke—if that were true, would that have any strange conclusion in his mind, if he had supposed that person insane—especially, if he supposed that person to be animated otherwise by kind feelings towards him—would then have been any evidence of insanity in him, if he had supposed the person to whom his suspicions were directed that that person had poisoned him, provided the grounds he gave for his opinion were true? 925

A. No, sir—Locke's definition of insanity.

Q. Assuming that what he stated in regard to his mother and her conduct in the household had been true, would there have been anything strange or insane in him in supposing that that person was insane?

A. There are so many peculiarities—so many eccentricities; it is a difficult thing to say where sanity commences and where it ends, and a physician and lawyer ought to be very careful before saying people are crazy—that is my feeling about it; it is hard to answer that question; there are peculiar eccentricities; we are all crazy on some point, or peculiar, which experts would say was a little beyond the line of sanity; we go into families, we medical men, where we see a great many things that would be looked upon as very strange to outsiders that are occurring constantly—that look like insanity; but the parties, in a drawing-room, or Court of Justice, or 926

927 other places, are perfectly sane—you would not dream of any trouble existing.

Q. The counsel has asked you in regard to this conversation Carlton had with you, in which he desired or requested you to examine his mother?

A. If that were true what he said, I should have felt that there was something wrong.

Q. If the grounds which he stated for his opinion—assuming they can be proved to be true—then you should have felt that he had cause for suspecting that there was  
928 something wrong with the person he suspected?

A. Some cause for supposing—I should think so; and I said, if things are so, there is something wrong; I knew there had been trouble, from time to time, and I had heard more than I ever want to hear again in reference to it.

Q. Did he state how many times, in that conversation—how many times his household had been broken up?

A. He spoke of it as having been repeatedly disturbed, and, after he returned from Newport he was greatly  
929 excited about it; he found everything in—well, it was all “chaos” again.

Q. He said that when he returned from Newport, he found his house in “chaos and disorder”?

A. Yes, sir.

Q. (*By* Mr. VAN PELT): I stopped asking you questions on the subject of insanity, supposing that you were not an expert?

A. I am not.

Q. You don't profess to be an expert?

930 A. No, sir.

Q. How is it that you undertake to give an opinion on the subject?

A. Because it is part of my professional study; we all study these subjects, but there are men who make insanity a speciality; I do not.

Q. (*By* Mr. LYON): You mean by “expert,” a man who makes the subject a speciality?

A. I do.

Q. (*By* Mr. VAN PELT): If Carlton was under the de-

lusion that he was poisoned, may he not also have been 931  
under the delusion that his mother had improperly treated  
him?

A. He may.

Q. Did it not occur to you, that if the foundation for  
one belief was false, that the other might be equally so?

A. I had not thought of the matter at all.

Q. Well, when you think of it now?

A. Oh, that is so, of course.

Q. I want you to specify the enormous acts that Car-  
lton charged against his mother, as evidence of her in- 932  
sanity; what had she done to him?

A. Well, sir, if you wish me to——

Q. I want every one of them, from first to last?

A. Carlton Gates said to me, after his first illness, that  
all his domestic comforts were destroyed; he spoke of  
his father and himself being alienated from one another—  
that much I know; I remember very well, which he re-  
ferred to at the time when I sent him to Europe; father,  
mother and son, met in my office, and neither of them  
recognized the other; that is a good many years ago; 933  
he has told me, if I am compelled to answer.

Q. Yes, sir; I want all he said against his mother,  
which led him to believe that she was insane?

A. Well, there had been trouble between him and his  
father, and that his mother had been affected by it; it  
was money matters—money did the work; that his  
mother was a kind-hearted woman, but that she had seen  
so much trouble, that she had become a weak-minded  
woman, and that he did not think she was responsible  
for her acts, she would do such queer things; she was 934  
so penurious about little things, she was so afraid to  
have her domestic affairs conducted as their position in  
life warranted her to have them; that I knew he was a  
man of literary tastes, and fond of literary society; that  
everything of that kind was excluded from him that he  
could not entertain; that he had a good home, and a  
home that ought to be as happy as any in the world;  
this he has talked to me time and again, but that it was  
the reverse from being a happy one; that his mother was

935 a very penurious woman, and she would not give him anything more to eat than was absolutely necessary ; I am telling you this under protest.

Q. Well, go on ?

A. That the whole household would be upset if he was away for any length of time—his room, his beds, his carpets ; his domestic establishment would be upset, his servants discharged, and he would go home and not have the means to get a meal of victuals ; that is the manner in which he talked, and that is what led him to believe that  
936 his mother was not right; that her mind and had become so affected, that he thought a lunatic asylum was the place for her.

Q. Did he tell you that his mother had given him all his fortune ?

A. No, sir.

Q. Did he tell you that she had given him every dollar with which he bought these articles that he assumed to give you ?

A. Never.

937 Q. Did you ever understand that they had been purchased with her money ?

A. Never.

Q. Did he ever pretend that his mother was saving except to give to him ?

A. I have told you all I know.

Q. Didn't you understand, from the manner in which he told you these things, that he was raving mad on that subject ?

A. No, sir.

938 Q. If there had been no truth in the matter, would not you have concluded that he was insane ?

A. I have answered that question.

Q. Well, I want an answer now ?

A. I have stated, that if your surmises were true, I should think that he was not right in his mind.

Q. You saw him in possession of the homestead at Yonkers ?

A. I know nothing of his being in possession.

Q. That is the household, as he called it—you saw that ?

A. Yes, sir.

939

Q. Didn't you know that that was derived from his father and mother?

A. No, sir; I have told you that I knew nothing more of the Gates' estate until this unfortunate affair occurred, than a man who had never heard of it.

Q. Don't you know that Carlton was in the habit of talking in this wild, raving manner to strangers?

A. No, sir; he never talked to me so.

Q. Did he ever tell you that his mother would not give him enough to eat?

940

A. No, sir; merely about discharging the servants, and not having the means to get meals.

Q. While he was in Europe, did not his mother have charge of his household?

A. I do not know.

Q. Were you never there?

A. No, sir.

Q. Did you ever hear a word said against Mrs. Gates' capability of conducting a household?

A. I have told you that.

941

Q. Except by Carlton?

A. That is the only occasion I have heard it, sir.

Q. If Carlton supposed that he was poisoned, by the immediate members of his family, without any ground—any reasonable ground for believing it—I understand you to say that that is a badge of insanity?

A. I should think so; I have told you so.

Q. And you have no means of knowing whether any of the things he told you were true or not, except his statements?

942

A. No, sir, only what I have read in the papers—some of the things I read in the papers I hoped were not true.

Q. When did you first hear that you were left this legacy?

A. I have told you—it was the Monday after his death.

Q. By whom?

A. By Dr. William Hulbert.

943 Q. Well, how did he inform you?

A. Well, I told you on my direct examination—I said that I received a letter on Monday, after his death, stating that he was dead; the first I knew of his death was when I arrived in town from my country seat I found a letter from Dr. Hulbert stating that I had been made an executor, and that I was a legatee.

Q. When you saw Carlton on the Monday and Thursday, when he was, you say, capable of making a will?

A. That is my opinion.

944 Q. Could he have been in the same state of mind and feeling with regard to his mother, and in regard to this poisoning, and at the same time have talked rationally on the subjects that you talked with him about?

A. I have no means of knowing that, it was not referred to.

Q. Does insanity or monomania necessarily effect the memory?

A. I think not.

945 Q. A person may talk rationally upon every subject except the subject of his monomania, may he not?

A. I think so.

Q. If Carlton's mother had been the subject of his monomania he might have talked on every other subject rationally except with regard to her?

A. If he was a monomaniac he might.

946 Q. And if he derived all or nearly all of this fortune from her and gave it to strangers, thinking that she was his worst enemy, and did not properly take care of him, you would think he was a monomaniac on that subject would you not—that is on the subject of his mother—towards his mother?

A. Well, no, I should not, where there was cause for it.

Q. If there was no cause for it?

A. Of course I should.

Q. (*By Mr. LYON*): The counsel has three times gone back to the proposition, that supposing Carlton imagined the persons around him were poisoning him, and there was no foundation for it, his mind was not deranged on

this subject—now, I want to know whether, in answering 947  
that question, you limit yourself to the idea that during  
that time he was laboring under—do you mean to make  
that limitation, or do you make the exception that if he  
was laboring under the effects of the disease at that time,  
that such a suspicion might be a natural consequence of  
the disease?

A. Well, if he was laboring with the effects of the dis-  
ease upon him—if it was affecting his mind—if the dis-  
ease was producing delirium—of course.

Q. That is the limitation you put upon it—you don't 948  
mean to say that under all the circumstances, whether in  
fever or not, that that would be a cause of monomania?

A. I limit it in that way.

Q. Three times counsel put the question and I want  
to know whether you limit it or not?

A. Yes, sir.

Q. You heard this diseased condition of his gall bladder  
and liver described--was this disease calculated to affect  
the coats of his stomach so as to produce great distress  
in that region of his system? 949

A. It might have produced great distress—if the  
stomach is full of bile it is not in a good condition.

Q. Suppose that condition to be attended with great  
physical suffering to the patient, would not the sensa-  
tions thus produced resemble the sensations produced by  
poisoning?

A. Well, it might produce irritation which would re-  
semble the effects of substances taken into the stomach  
which were poisonous.

Q. Would it not be natural for a patient, particularly 950  
a medical man, who was suffering from that irritation of  
the coats of the stomach, and who had some reason to  
suppose that poison had been administered to him, to  
charge those effects to poison, and would such a suppo-  
sition on his part be any indication of monomania on  
the subject of poison?

A. Oh, not at all.

Q. (*By* Mr. VAN PELT): If three physicians as emi-  
nent as yourself, Doctor Upham, and Doctor Arnold,  
had assured the Doctor, who should know something

943 Q. Well, how did he inform you ?

A. Well, I told you on my direct examination—I said that I received a letter on Monday, after his death, stating that he was dead ; the first I knew of his death was when I arrived in town from my country seat I found a letter from Dr. Hulbert stating that I had been made an executor, and that I was a legatee.

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sition on his part be any indication of monomania on  
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A. Oh, not at all.

Q. (*By Mr. VAN PELT*): If three physicians as emi-  
nent as yourself, Doctor Upham, and Doctor Arnold,  
had assured the Doctor, who should know something

951 himself, that he was not poisoned, and account for the symptoms that he complained of on natural grounds, would it not show that there was something wrong in his mind if he still persevered in the idea that he was poisoned?

A. Well, his mind would have been so impressed with the fact that the parties whom he suspected would be willing to do it, and that they had the opportunities of doing it, his stomach being deranged, I do not think it would be an evidence of insanity.

952 Q. Would it not show that his mind was rather disturbed?

A. That his mind, on that subject, was excited—disturbed—of course.

Q. During the second week did he not have the same disease that he had during the first week?

A. He had additional trouble—this intercurrent pneumonia going on—which is inflammation of the lung about the part which was diseased originally—he would not have died, as Dr. Arnold properly said, if it had not been  
953 for this intercurrent trouble—that is he would not have died so soon.

Q. There was no transition from one disease to the other during the first and second weeks?

A. What do you mean by transition.

Q. I mean did he have the same disease?

A. No, there was pneumonia engrafted on this tuberculous condition of the lungs which was acute in its character; the inflammation was the cause of his dying so rapidly.

954 Q. (*By the SURROGATE*): You visited him on the eighth of August—just give me the dates?

A. In August—I saw him on the 12th, first—it was Thursday; I saw him again on Saturday the 14th, Monday the 16th, Thursday the 19th.

Q. You take the first day—the 12th, be kind enough to tell me all that took place between you and the Doctor, himself?

A. It was merely the examination of his case.

Q. What conversation took place in reference to his condition?

A. He stated that he was very sick—that he was fearful that he would not get well, and he was excited about it—he was very much excited ; he was nervous and restless, throwing himself about ; he was very weak, indeed, and he wanted to know what my opinion was ; he was evidently suffering from great mental excitement ; I did very little except to assure him, and try to console him, and quiet his mind. 955

Q. Did he talk about his mother that day, or his father, or family ?

A. Not that day ; I think it was the next time I saw him, but I was so spoken to by Dr. Arnold. 956

Q. Did you see Mrs. Gates then ?

A. I saw her when I went down stairs.

Q. Not in his room ?

A. No, sir.

Q. Was the nurse in his room ?

A. No, sir.

Q. Was there a girl or boy ?

A. There was no one there—nobody but Dr. Arnold ; I am not sure, but I think afterward I saw Doctor Hulbert. 957

Q. I am speaking about what you saw in his room ?

A. I do not remember anybody else ; the nurse had not arrived yet.

Q. The next day whom did you see ?

A. I saw Doctor Arnold, I think ; the nurse was there the next day.

Q. Can you tell what took place at that time ?

A. That is the time when he stated to me that he proposed to make a will. 958

Q. As near as you can, will you give me his language ?

A. He said to me : “ I wish to make a will, and I wish to do it because I think I am not going to live ; ” I then recommended him not to do it—that he was suffering under excitement from fever, and that he was not in a proper condition to—that he was not capable of making a will ; “ Well,” he says, “ I will do as you wish in the matter—I am going to make a will, and I am going to make you and Doctor Hulbert executors ; ” I remon-

959 strated against his making me an executor, for the reason that I have stated—that I did not have time ; he said : “ I want you to do it as a personal favor ; I am going to give you my paintings, my cabinet and library ; ” I said you are very kind to remember me, but I did not expect anything of the kind ; that is about the conversation.

Q. Well, the next week ?

A. The next, was on Monday the 16th ; I found him calm, weak and more like Carlton Gates ; he appeared to  
960 be rational ; he talked free and rationally.

Q. Can't you give me the conversation ?

A. The conversation was about his case—what was to be done—what he was to take—how difficult it was for him to breathe—that his lungs could not contain enough oxygen to change the character of the blood ; that was about the conversation.

Q. The next time ?

A. The next time I saw him he was cheerful, but he said : “ Doctor, I am not going to get well—I shall die—  
961 I feel I am growing weaker ; ” and I said : “ Well, how do you feel you are ? ” he said : “ I am very well, but I am very weak ; I can hardly turn in bed ; and conversation of that kind ; I cannot give you the particulars, but that is the amount of the conversation.

(Signed,) JAMES R. WOOD.

MARGARET FITZPATRICK, being called in behalf of the pro-  
962 ponents, and sworn by the SURROGATE, was examined by Mr. LYON, and testified as follows :

Q. Your name is Margaret Fitzpatrick ?

A. Yes, sir.

Q. Where do you live ?

A. In the Town of Yonkers, with Mr. Welby.

Q. In the month of July last where did you live ?

A. I was in Mamaroneck, mostly.

Q. At any time during the month of July, did you go to any place in Yonkers ?

- A. Yes, sir. 963
- Q. Did you live with Carlton Gates?
- A. Yes, sir ; the 9th of August.
- Q. You went there to live?
- A. Yes, sir.
- Q. In what capacity?
- A. As chambermaid.
- Q. Were you there up to the time that Carlton died?
- A. Yes, sir.
- Q. When did you first see Mrs. Gates?
- A. The Saturday—I went on Monday, and the Satur- 964  
day before that I saw Mrs. Gates.
- Q. Where did you first see her at the house in Yonkers?
- A. I saw her in her house in Yonkers, in the dining-room, Saturday morning.
- Q. You saw her on Saturday the 7th?
- A. Yes, sir.
- Q. And on Monday you went to live there?
- A. Yes, sir.
- Q. That was the 9th? 965
- A. Yes, sir.
- Q. After you went to live there, from that time, when did you first see Mrs. Gates after you went to live there?
- A. I saw her on Monday morning.
- Q. Whereabouts?
- A. Down-stairs ; she opened the door down-stairs ; it was in the morning, and I and my sister both sat in the kitchen for about, I think, three-quarters of an hour, and Mrs. Gates didn't tell Doctor Gates that we were there, and she didn't let the little girl up-stairs know it ; and 966  
Mrs. Migy was out—she was on a visit—and when she came in she went up and told Doctor Gates, and she took my sister up and he engaged her at fourteen dollars a month, and she told him her sister was down-stairs and he sent down for me to go up and engaged me for ten dollars a month to do the up-stairs work ; he was in bed sick, and he hired me just as anybody else would, and he told me that if we left before our month was up we should not get paid.

967 Q. Both your sister and you went up-stairs where he was, and he engaged you both ?

A. Yes, sir.

Q. You to do the chamber-work and she to do the cooking ?

A. Yes, sir.

Q. You then commenced your duties, and remained there that Autumn as long as he lived ?

A. Yes, sir.

968 Q. During that period of time, while you were there, what took place between Mrs. Gates and yourself in regard to your food ?

A. Well, Mrs. Gates—we didn't remark anything about the food while Mrs. Gates was in the house ; she went, on Wednesday morning, I think it was, away ; she was only there on Monday and Tuesday and Tuesday night, and on Wednesday morning she went away ; on Monday afternoon Mr. Gates sent for me down-stairs, and I went up to the room and he asked me if I didn't understand that he hired me as chambermaid, and I said : " Yes ;"

969 and he said he wanted me to come up-stairs when he rang the bell, and I told him I would ; he said that he had ordered ice most expressly for his own use, and that his mother had it locked in the wine-cellar and no one could get in, and that he had to send out to borrow some ; that he had had a rush of blood to his stomach, and would have given one thousand dollars for two pounds of ice, but that he could not get it ; he said that his mother was crazy—not only crazy, but wicked—and that he was going to send her away for three months, and then he

970 said she should not come back as long as he kept house—that he would not let her come back ; then Mrs. Gates told him, before we went to bed, that, if he wanted anything in the night, he should ring the bell, and I would get up and get it for him ; he did, and he said that was very kind of me ; in the night he rang the bell, and wanted some ice broke up ; Mrs. Migy and myself came into the room with him, and Mrs. Gates came down-stairs and broke the ice with us ; he said he was sorry that I had to get up, and hoped I should not be

called any more ; and that Monday evening, when Mrs. 971  
 Gates came in, he demanded the key of her, and he sent  
 for me to give me the key of the cellar to go down and  
 open the door, and he told me to open the door and to  
 bring the key back to him instantly ; he asked me three  
 times over whether I would give the key to Mrs. Gates if  
 he let me have it, and I said no, that I would not give it  
 to Mrs. Gates ; and he asked me if I would bring it back,  
 and I said yes, sir, and then he said he thought he had  
 better wait until Mrs. Migy came in and give her the key  
 to open the door, and I said that I would rather he would 972  
 do that, and that afternoon the housekeeper came ; Mr.  
 Gates told us that we were going to have a housekeeper,  
 that she was a very nice person, and that he hoped we  
 would get along as well as we could, and she came ; on  
 Wednesday morning Mr. Gates sent down-stairs for me  
 and called me ; I went into the room, and he told me to  
 go to Mrs. Gates and ask her what she would have for  
 her breakfast, and whatever she would have to give it to  
 her, and then she was to go instantly away ; I went in  
 and saw her, and she said she was getting ready to go, 973  
 and that she would have a cup of tea with some bread for  
 her breakfast ; then he told me to tell Mrs. Gates to come  
 up—that he wanted to see her—and when she came up  
 he told her to shut the door, and she did, and I don't  
 know what he said to her.

Q. Was she back and forth to the house almost every  
 day from that time ?

A. No, sir ; that was the only day she came back ; I  
 didn't see her after that day.

Q. But she was back more than on that Thursday, 974  
 wasn't she, before his death ?

A. She wasn't at the house, that I know of.

Q. What day did she come back, after leaving the  
 house on the day that you say Carlton Gates sent her  
 away ?

A. She came back the Saturday evening after he  
 died.

Q. What took place at that time between you and  
 Mrs. Gates ?

975 A. Then Mrs. Gates—all the doors were kept locked, and she didn't have any charge of the house—Miss Sault kept charge of the house until he was buried, on Wednesday ; so we were just as usual—under Miss Sault, the housekeeper.

Q. What took place with Mrs. Gates in regard to your food ?

A. Mrs. Gates, the Sunday afterwards—some one at the dining-room table asked for some bread ; I told her the bread was locked and I could not get any, and Mrs.  
976 Gates did not come to get any for her, and on Monday I left ; that day she had the coal locked up in the coal-cellar.

Q. Who locked up the bread and coal ?

A. Mrs. Gates herself.

Q. What was the cause of your going away from there ?

Q. We didn't like to stay, because they said Mrs. Gates' wasn't nice to get along with.

Q. Did you ever have any difficulty in regard to your  
977 own food, with her ?

A. No, sir ; we didn't have any bread that Sunday for our dinner.

Q. Was there any difficulty in the kitchen with the other servants on that day ?

A. No, sir.

Q. What did you say to Dr. Hulbert about your staying ?

A. We said we wouldn't stay when Dr. Hulbert was going away ; we said we would rather go too, and Dr.  
978 Hulbert said he would rather we would stay until Monday.

Q. Did he beg you to stay ?

A. He said we would oblige him if we would stay until Monday ; then Mrs. Gates wanted us to take up carpets and shake them.

Q. You went on Monday ?

A. Yes, sir ; we went on Monday afternoon.

Q. You came there on the ninth, and from the morning of the eleventh Mrs. Gates had nothing to do with the household ?

A. No, sir ; not until Mr. Gates was buried. 979

Q. Up to that time Miss Sault and Mrs. Migy, yourself and your sister, composed the household, during that time ?

A. Yes, sir.

Q. And your sister did the cooking and you did the waiting, and the household was carried on in that way ?

A. Yes, sir.

Q. There was no interference with that until after his death ?

A. No, sir. 980

Q. When on the Monday following, you left ?

A. Yes, sir.

*Cross-examined, by Mr. VAN PELT :*

Q. Did I understand you to say that Mrs. Gates refused to give Carlton ice ?

A. No ; I didn't say she refused to give it to him, but she had it locked up, and he couldn't get it when he wanted it.

Q. Where was Mrs. Gates at the time ? 981

A. I don't know ; she was out ; she locked the ice in the wine-cellar and she was out, and Mr. Gates wanted ice and couldn't get, and he borrowed some.

Q. What was in the wine-cellar besides ice ?

A. Wine.

Q. What else ?

A. I don't know—there was wine and ice.

Q. Where had Mrs. Gates gone at that time ?

A. I don't know.

Q. You don't mean to say that Mrs. Gates intended to keep Carlton from having the ice, do you ? 982

A. I don't know whether she did or not.

Q. And then Carlton said, that Mrs. Migy should keep the key of the wine-cellar ?

A. No, sir ; he didn't say she should keep it ; he called me up to give it to me, and asked me whether I would give the key to Mrs. Gates ; whether, if he gave me the key, I would go down and open the wine-cellar, and after opening it bring the key back to him.

983 Q. Did you ask Mrs. Gates for the key of the wine-cellar as soon as you got back ?

A. No, sir.

Q. Who did she give it to ?

A. Mr. Gates sent for me, and he had the key ; when Mrs. Gates returned he got the key of her.

Q. You did not know of her refusing to give it to him ?

A. I don't know ; I heard she did.

Q. About the bread—that was on Sunday, after Carlton died ?

984 A. Yes, sir.

Q. Where was she ?

A. At her dinner, in the dining-room.

Q. And the servants sent for her ?

A. The company up stairs sent for me to bring them more bread, and I told them I couldn't give it to them—it was locked.

Q. What company was there ?

A. I don't know.

Q. Where was Mrs. Gates ?

985 A. She was there too.

Q. At this same table, where there was no bread ?

A. Yes, sir ; and she didn't get up to get any bread.

Q. Did you ask her for the bread ?

A. No, sir ; I only said I couldn't take them up any more bread—the bread was locked.

Q. Were they in Mrs. Gates' company at the time ?

A. Yes, sir, at the table.

Q. Did they ask you for any more bread ?

A. No, sir ; they told me to bring it up, and I told  
986 them I couldn't.

Q. And you did not ask Mrs. Gates for any ?

A. No, sir.

Q. You let it go ?

A. Because she could hear them ask me.

Q. Don't you know that Carlton had died the night before ?

A. It was nearly a week then, Wednesday and Saturday.

Q. Then you remained there for a week after he was buried ?

A. Yes, sir, from Wednesday until Monday. 987

Q. Did you always get enough to eat while you were there?

A. Yes, sir.

Q. Was it good?

A. Yes, sir.

Q. Had you any fault to find about your own eating?

A. No, sir, we didn't have any fault to find.

Q. What did you ever see Mrs. Gates do that wasn't right?

A. Mrs. Gates wasn't much there while I was there. 988

Q. What did you ever see her do that you didn't think was right?

A. Locking everything up.

Q. Locking the coal up and locking the wine up?

A. We didn't much care about the wine being locked up, but it is very disagreeable to have everything locked up.

A. Were there not large numbers of strangers going in and out there all the time?

A. No, sir. 989

Q. There were gentlemen going in and out?

A. No, sir.

Q. Are you sure of that?

A. There weren't strangers going in and out.

Q. Well, there were several persons going in and out?

A. No, sir, I didn't mark it.

Q. Wasn't Mrs. Gates going off, back and forth all the time to different doctors, during the time you were there?

A. No, sir.

990

Mr. LYON: The witness is speaking of the time subsequent to the burial of Carlton Gates.

Q. When you say Mrs. Gates locked up the house——

A. He was after being buried, and at that time there was no strangers coming or going.

Q. I am asking you about things that occurred before Carlton was buried?

A. She wasn't there any only from Monday to Wednesday morning.

- 991 Q. And you didn't see anything wrong during that time?  
 A. No, sir.  
 Q. All you saw that you didn't like was that after Carlton was buried she locked these things up?  
 A. Yes, sir.  
 Q. Who hired you?  
 A. Mr. Gates.  
 Q. Who sent you to the house?  
 A. A woman who was washing there told me that she was going to work there on Saturday morning, and she  
 992 took me down to the house with her.  
 Q. Did Mrs. Gates know that you came there to be hired?  
 A. Yes, sir.  
 Q. Did she talk to you about it?  
 A. Yes, sir, Saturday morning.  
 Q. Did you understand that you were going to work for her or Carlton?  
 A. I didn't know until I went there Monday.  
 Q. You understood on Saturday that you were going  
 993 to work for her?  
 A. I didn't understand how matters were?  
 Q. You were never there before?  
 A. No, sir.  
 Q. And did not know the family?  
 A. No, sir.  
 Q. And you were there for how long?  
 A. I was there three weeks altogether.  
 Q. Have you been paid?  
 A. Yes, sir.  
 994 Q. Who paid you?  
 A. Mr. Hulbert.  
 Q. Where?  
 A. He sent for my sister after he was going away, and she went to him and he paid her both our wages.  
 Q. Whereabouts?  
 A. I don't know.  
 Q. At a place in the village—Rhinefelder's?  
 A. I think it was, I am not sure.  
 Q. How much did he pay you?

- A. Ten dollars. 995
- Q. Ten dollars for your three weeks wages?
- A. He paid me a month's wages; I was engaged for a month by Dr. Gates, and was paid for a month.
- Q. You were there three weeks?
- A. Yes, sir.
- Q. How much were you paid?
- A. Ten dollars.
- Q. Your sister worked with you there also?
- A. Yes, sir.
- Q. Do you know of the doors being kept locked to keep Mrs. Gates out of the house during the time that you were there? 996
- A. I don't know.
- Q. When she went away do you remember of the front door and back door being kept locked and bolted so she could not get in?
- A. I don't know as they were.
- Q. Did you understand that she was to be kept out the house from Carlton or anyone in the house?
- A. No, sir; I didn't hear them say anything about it. 997
- Q. How often did you see Carlton during the time you were there?
- A. Every day.
- Q. Did you go up to his room?
- A. Up to his room every day.
- Q. Was he in bed always?
- A. Yes, sir, sometimes he would get up and sit in a chair while the bed was being changed; the bed he was in when I first went there was taken down and another bed put up, and while that was being done he went into another room. 998
- Q. How did Carlton talk and act?
- A. Just the same as any other person would as far as I could see.
- Q. Did he ever frighten you?
- A. No, sir.
- Q. Didn't he talk against his mother?
- A. That was all he ever said against his mother, was the afternoon he could not get the ice; he said she was

999 crazy, and not only crazy but she was wicked, and that he would give a thousand dollars for two pounds of ice if he had it, and he sent out and borrowed some.

Q. How soon after his mother came home did he send for you to take the key?

A. I couldn't say.

Q. How soon, as near as you can recollect now?

A. I guess it was about half an hour.

Q. You don't know of her refusing to give up the key?

A. No, sir; I don't know anything about it until he  
1000 sent down for me to go up, and when I went up he had the key.

Q. You say that Doctor Hulbert was there all the time?

A. Yes, sir; sometimes he was away, and sometimes he was there.

Q. Wasn't he there most all the time in charge?

A. A couple of times he went away, I believe, and came back again; he wasn't there the day he died.

Q. When did he go away before that?

1001 A. I think, it was Thursday or Friday; I am not sure.

Q. Who was there when Carlton died?

A. Miss Sault, Mrs. Migy and the nurse; we were there.

Q. Who was in the room with him?

A. I don't know; I guess his nurse and Mrs. Migy, and Miss Sault, perhaps.

Q. You were not there?

A. No, sir.

Q. (By Mr. LYON): Did you hear Mrs. Gates call your  
1002 sister any names?

A. No; I don't remember.

Q. Did you hear her say she was crazy—speaking of your sister?

A. Yes, sir; she said she was crazy; my sister made some objection to shaking the carpets, and she said she wouldn't pay her; my sister told her she was already paid, and she asked her who had paid her; she told her Mr. Hulbert; Mrs. Gates said she had a good mind to get Mr. Hulbert arrested for paying before the month

was up ; then she said she had a good mind to have us 1003  
all arrested for going away.

Q. Who did Mrs. Gates say was crazy ?

A. She asked me a couple of times if I was crazy—she  
said that to my sister ; she would make her bring beds  
up and down ; and she would ask her if she was crazy, or  
say she was crazy—something of that kind.

Q. (*By* Mr. VAN PELT) : That was after Carlton died ?

A. Yes, sir.

(Signed) MARGARET FITZPATRICK.

1004

On motion, it is ordered that all further proceedings  
in this matter be and they are hereby adjourned to  
Friday, November 10th, 1869, at 10 o'clock, a.m.

JOHN W. MILLS.

*Surrogate.*

November 19th, 1869, met pursuant to adjournment.

Present—Mr. LYON and Mr. PRIME, for Executors ; 1005  
Mr. ROMER, for Village of Yonkers ;  
Mr. VAN PELT and Mr. NORRIS, for Contestants.

AMOS W. GATES, M. D., being re-called, was cross ex-  
amined by Mr. LYON, and testified as follows :

Q. In your direct-examination you said that you had  
discovered that by adroit management your son was ac-  
quiring an influence over your affairs, give me the in-  
stances, and what you meant by his acquiring, by adroit  
management, an influence over your affairs ? 1006

A. He managed, in a number of instances, to get more  
money out of me than he should do.

Q. I am not asking you the results, I am asking you  
the instances of his adroit management ; you say he man-  
aged—I want to know how he managed ; what were the  
circumstances of his adroit management ?

A. The most striking one, I think of, is his worrying  
me through his mother.

Q. How did he worry you through his mother ?

1007 A. When he could not succeed in getting—answering his ends in other ways, he would get her to help him.

Q. How did he get her to help him; state the instances in which she helped him, and how she helped him?

A. He managed, with her, to get the trust-deed, that he could not have got without her influence.

Q. The trust-deed of what?

A. Of the estate at Yonkers.

Q. From whom, to whom?

1008 A. From me to Mrs. Nesbit.

Q. Did you give the trust to Mrs. Nesbit?

A. Yes, sir.

Q. Now, then, the instances of influence on the part of Mrs. Gates, the mother, that is the management, I am asking about, and I want you to give me the instances of this adroit management—you now say, that through his mother he got an influence over you—now, how did she get that out of you?

A. By worrying me—making my condition uncomfortable.  
1009 able.

Q. How long was she engaged in that process of worrying you and making you uncomfortable, until you did it?

A. Many months.

Q. When did you make the deed finally?

A. In 1860, I think I made one; I don't know as the trust-deed was made before that; I think in 1860.

Q. Then the deed that he and his mother worried out of you, was a trust-deed to Mrs. Nesbit of this property?

1010 A. Yes, sir.

Q. Mrs. Nesbit was the trustee and he was not?

A. He was not.

Q. Well, sir, what mode was pursued to worry you and make you uncomfortable?

A. Well, talking at nights, when I wanted to sleep, was one.

Q. Do you recollect about how many months this operation continued?

A. I don't think I could very near—a number of months.

- Q. Is that trust-deed in existence yet? 1011
- A. No, sir ; that trust was changed to Carlton Gates.
- Q. Who changed that?
- A. Mrs. Nesbit resigned the trust.
- Q. And Carlton Gates was appointed trustee—what year was that in?
- A. In 1864, I think.
- Q. Did you assent to that change?
- A. I did.
- Q. How was this trust—what was the general nature of this trust? 1012
- A. Well, the trust was made to Mrs. Nesbit, for the benefit of Mrs. Gates ; she was to have the benefit of the place, Mrs. Gates was to have the use of the place—the benefit of it.
- Q. Mrs. Gates was?
- A. Yes, sir.
- Q. During her life?
- A. Yes, sir.
- Q. And after her death, what was to become of it then? 1013
- A. It was to go to his heirs.
- Q. Did not she have a right to make a will disposing of it?
- A. Yes, sir.
- Q. Did that trust continue to the time of Carlton's death?
- A. The trust was changed to Carlton.
- Q. Did it, after it was changed to him, continue—was he the trustee down to the time of his death?
- A. He was. 1014
- Q. Did you ever take any steps to have him removed?
- A. I did not ; I objected a long time.
- Q. One moment, I have not asked you that ; at that time, when this trust deed was made, what did you value that property at?
- A. I don't know what it was worth.
- Q. Had you no opinion or idea at all, what it was worth?
- A. I should think it was worth \$7,000 perhaps.

- 1015 Q. At any time, and if so, when have you made any provision for Mrs. Gates in the shape of an annuity?  
 A. In connection with that trust, I gave her \$3,000 a year.  
 Q. Did you pay that regularly?  
 A. I did.  
 Q. Always paid it regularly?  
 A. Yes, sir.  
 Q. She never complained to you that it had not been paid regularly?
- 1016 A. No, sir.  
 Q. Did she ever call upon you to increase it?  
 A. No, sir; I don't know that she did.  
 Q. What other property had your wife besides this annuity of \$3,000, and this life estate in the Yonkers property—what other property had Mrs. Gates at the time of her son's death?  
 A. I think that from the time the trust-deed was made, she had no property of her own from the time it was made until the death of her sister.
- 1017 Q. When was that?  
 A. I think in 1864.  
 Q. Did not you make any other provisions for her at any time, except these \$3,000 a year and the place?  
 A. I gave her more money.  
 Q. What money did you give her?  
 A. Well, I gave her different amounts of money at different times, and finally it became a habit to give her an extra thousand dollars a year, which I paid as presents.
- 1018 Q. That made it \$4,000 a year about?  
 A. Yes, sir.  
 Q. Do you know anything about \$20,000 in bank stock that she had?  
 A. Oh, I gave her \$20,000 worth—\$22,800 when I gave it to her—of bank stock as a payment down, in place of the annuity of \$3,000 a year.  
 Q. When was that done?  
 A. It was done about the time of the change, or one year after the change of the trusteeship to Carlton Gates.

Q. You mean to say then, that you have not since paid 1019 any annuity to her—you didn't pay that \$3,000 a year after that was done?

A. No, sir; I did not.

Q. Now, this is bringing me to the point; did not she ever make a claim upon you for that annuity, or any part of it after that time?

A. No, sir.

Q. So the annuity since that has been the interest or whatever dividends there have been on this stock?

A. That was ten per cent. on the stock. 1020

Q. Well, ten per cent. on twenty thousand dollars—do you make that three thousand dollars, Doctor?

A. Would that make it three thousand dollars.

Q. You say you paid her three thousand dollars a year, and now you say, that, afterwards, the twenty thousand dollars worth of stock was given to her by you, in lieu of the annuity—that has been a ten per cent. stock?

A. Yes, sir; I don't think they are now paying ten per cent., but they paid it most of the time. 1021

Q. I say, that is the mode in which you think this three thousand dollars a year has been discharged?

A. Yes, sir.

Q. Now, calling your attention to that fact, has there never been any complaint made by your wife or Carlton, or anybody in her behalf, that the income from that stock did not amount to the annuity of three thousand dollars a year.

A. I don't remember there was; after paying the thousand dollars extra to Carlton Gates for one year, I 1022 saw that he was spending it, and spending more—a good deal—and I stopped paying the thousand dollars a year; I have not paid that for two years or more—that, understand, was a present—that was not an annuity.

Q. But we understand the fact to be, that since the time you transferred the twenty thousand dollars of stock that you have not paid that three thousand dollars annuity—you have considered this in the place of it?

A. I have not.

1023 Q. What property did his mother receive from her sisters?

A. I know little about that.

Q. Don't you know anything about it?

A. Yes, sir.

Q. According to your best judgment?

A. Some real estate and some stock.

Q. Amounting to about how much?

A. I should think, somewhere from eighty to one hundred thousand dollars—perhaps a hundred thousand dollars.

1024 Q. I understand you that Carlton was your only child—she had no other children, except Carlton?

A. No, no other children.

Q. Her sister, Mrs. Nesbit, is a lady of comfortable property?

A. Yes, sir.

Q. Doctor, as to your own property—your circumstances, to say the least of it, were very comfortable, were they not, at the time of your son's death?

1025 A. Well, they were at the time of my son's death—yes.

Q. In regard to property, I mean—were you possessed of a handsome estate?

A. I was possessed of enough to maintain myself.

Q. What do you call enough to maintain yourself—the interest of two hundred and fifty thousand dollars?

A. I have never had the interest of two hundred and fifty thousand dollars.

1026 Q. Well, without referring to what interest you have had, you never valued your estate at the amount of two hundred and fifty thousand dollars?

A. I don't think I have.

Q. Well, how much short of it, sir?

A. Well, it ain't very easy to say what my real estate has been worth at any time; I had a good deal of poor property, and some good—some turns up good for nothing.

Q. Do you recollect an interview between yourself and Carlton, at Doctor Hulbert's office, within a few years?

- A. Yes ; I shall never forget that. 1027
- Q. What was the object of that meeting there ?
- A. I think the meeting was accidental.
- Q. You think it was accidental ?
- A. I think so.
- Q. Was not that meeting arranged to see if it was possible to adjust the claims which Carlton, on behalf of his mother, made against you ?
- A. I think not.
- Q. When that meeting did take place, was not that subject discussed between you as to the claims made by him against you on behalf of Mrs. Gates, for not accounting for money which belonged to her through other members of her family or otherwise ? 1028
- A. I don't think it was.
- Q. I ask you if, on that occasion, Carlton Gates didn't make a claim against you ?
- A. I think likely he did.
- Q. In behalf of his mother ?
- A. Very likely.
- Q. For money ? 1029
- A. Very likely.
- Q. Which he claimed had been received by you, belonging to his mother, and which had never been accounted for by you ?
- A. Very likely he did ; I have known him to do such things.
- Q. How long did that interview last ?
- A. I should think it lasted an hour, I don't know.
- Q. What ground did you take, upon that occasion, in regard to that claimant ? 1020
- A. I don't think I took much ground at all ; it was a tirade against me that I did not answer.
- Q. You made no answer at all ?
- A. I don't know that I did.
- Q. What year was that in ?
- A. I cannot tell.
- Q. You can come within a few years of it ?
- A. I don't know whether it was after or before the trusteeship was changed ; I should think it was after, but I cannot say.

1031 Q. Well, it is within the last ten years ?

A. Oh, yes.

Q. How much short of that ?

A. If I knew I would tell you, but I cannot tell.

Q. It was not the last year of his life ?

A. No, sir.

Q. Well, within four or five years—we can get at some idea of it ?

A. Perhaps it was soon after or before the change of that trusteeship ; it was about five years ago ; my recollection of that year is very indefinite.

1032 Q. In your direct-examination you stated that you thought Mrs. Gates had spoiled her son by indulgence, now, will you give me a statement of what that indulgence was, and when it commenced, at what period of his life, and how the spoiling process went on ?

A. Mrs. Gates was a very kind mother, and intended to do her duty to her son as well as she could ; I think she was altogether too indulgent with him, and that it injured him very much.

1033 Q. In what way did she indulge him ?

A. In always allowing him all his requests.

Q. Whatever request he would make of her, whether it was for his good, in your judgment, or not, she granted it as far as she was able to ?

A. I didn't say in all cases, but it was generally so, I think.

Q. In other words, to the extent of her means she would allow him as much money as he would call for when he was quite young ?

1034 A. Well, I think she always did that.

Q. You didn't spoil him in that way, did you ?

A. Well, I think I have given him a good deal more money than was for his good.

Q. Did not she complain that you didn't give him as much money as you ought to give him ?

A. On some few occasions.

Q. My question is, didn't she complain that you would not give him as much money as you ought to give him ?

A. I don't think that was her general impression, but

on some occasions when he wanted money specially, and 1035  
I did not see fit to give him she would.

Q. Complain with his knowledge, and in his presence?

A. Yes, sir.

Q. You stated that you left this house, yourself—gave  
up your home some years ago—had the relations between  
yourself and Mrs. Gates anything to do with your going  
away?

A. I think the origin of all the trouble——

Q. I have not asked you the origin, I want to know  
whether the relations which existed between your wife 1036  
and yourself had anything to do with your leaving the  
place and giving up?

A. Well, if there is no circumstance to come in, I don't  
know.

Q. You don't know whether it had anything to do with  
it or not—I ask you whether the relations—the des-  
cription you have given us of them, between Mrs. Gates  
and yourself—had anything to do with you going away  
from your house at Yonkers, and living the most of your  
life elsewhere? 1037

A. Well, it had.

Q. Now, sir, when you returned to your house on these  
occasions, in making your short visits there, did you take  
the place of a boarder?

A. After the year 1855, I always paid board there.

Q. On your visits, when you came home, you paid for  
your meals?

A. Well, that was even before I left the house; I  
practised medicine some time after that.

Q. Whom did you pay board to? 1038

A. Mrs. Gates.

Q. For any of the offices about your clothes—sewing,  
mending, &c.—did you pay for those also?

A. No, sir.

Q. Have not you said you had; have not you told  
anybody that you had to pay for every button that was  
sewed upon your coat, and every shirt you had mended?

A. I don't think I have; I may have said so, but I  
don't think I have.

1039 Q. Well, it is not the fact, anyhow—you did not pay for such things ?

A. No, sir, I did not ; I didn't pay Mrs. Gates for sewing on the buttons ; if she sewed them on—if anybody else sewed them on, I paid for them ; it is all paid up.

Q. Now, will you tell me on what occasions your son ever told you he would shoot you ?

A. He has told me so a number of times.

Q. Well, give me the first occasion he has said that ; when it was, and the circumstances connected with it ?

1040 A. I think he told me he would shoot me before he was twenty years of age.

Q. Well, where was that ?

A. It was in my own house, and before I moved to the new place.

Q. What was the cause of difference between you at the time that remark took place—was he asking you for money ?

A. No, sir ; I don't think he was then.

1041 Q. Well, what was the occasion ; let us have the occasion so that we may judge of what this man was—let us see what his condition was at that early period of his life ?

A. Well, it was on Sunday at dinner ; he was talking in a pretty high strain, and talking about shooting somebody—I don't remember who it was ; he was then a boy ; I considered him so ; I told him that was very improper language to use, and he didn't like that ; I told him he should not threaten to shoot people in that way.

Q. He got angry at that ?

1042 A. Yes, sir.

Q. What did he say ?

A. Well, before he got through with it he said he would shoot me ; he didn't offer to shoot me then, but said he would shoot me if he had any occasion for it.

Q. Well, sir, that was the first occasion when he said he would shoot you ; now, I want his first expression in that connection ; you say he was using very improper language and talking like a boy, that he was going to shoot somebody ; I suppose somebody had offended him, if I understand the current of the conversation ?

A. Well, he said he would shoot me. 1043

Q. Then you said that his remark in regard to shooting somebody else was a very improper remark to make?

A. Yes, sir.

Q. And he got angry at that?

A. Yes, sir.

Q. And then he said: "Well, I will shoot you;" is that the way it come about?

A. Yes, sir.

Q. Substantially?

A. Yes, sir. 1044

Q. Will you give us the next occasion when he threatened to shoot you?

A. I don't remember any other occasion distinctly, until he wanted money of me when I was going to Chicago.

Q. Upon the occasion which you have already stated?

A. Yes, sir.

Q. Upon that occasion, so far as anything he said in regard to shooting you is concerned, it was all detailed by you at that time was it? 1045

A. I don't understand—

Q. Give me the remark he made in connection with the fact that he said he would shoot you—repeat to us what he did say in that connection at that time?

A. At the time of breaking into the room?

Q. Yes; the occasion you referred to on your direct examination you mean—don't you?

A. Yes, sir.

Q. He came into the room and you got up out of bed?

A. Yes, sir. 1046

Q. What did he say in connection with that part of it, that he would shoot?

A. Well, he said that I—he said that he would kill me; he would shoot me; that I should not go away without giving him money.

Q. Did he use, in that connection, the expression "I will shoot you?"

A. I think he did; that was not all he said.

Q. Have you read your testimony that you gave on your direct-examination of that circumstance?

1047 A. I don't know that I have.

Q. Then, I suppose, you cannot tell exactly how it is reported?

A. He had me by the——

Q. You have stated that—that he had you by the collar here?

A. Yes, sir.

Q. He made you agree to do what you did do on that occasion?

A. Yes, sir.

1048 Q. When was the next occasion when he threatened to shoot you?

A. Oh, well, I think the same autumn he threatened to kill me if I didn't give him more money.

Q. In your direct-examination, you said that he often threatened to shoot you—now, I want to know the occasion—to know exactly what took place between the parties at the time?

A. Well, on some occasions——

1049 Q. Well, now, this occasion that we have got to—I want to fix your mind on an occasion when you can give me the whole circumstances of the case?

A. Well, there was another occasion that I don't remember, was brought out on the first examination; I came home at evening; he met me in the barn.

Q. Let us fix about what time it was?

A. I should think it was the same year, or the early part of the next year, that the first happened.

Q. That was about when he was twenty-one years of age then?

1050 A. Oh, this was—there was considerable space of time between that first threat of shooting and the next—some years.

Q. (*By the SURROGATE*): In your direct-examination, the reporter has it here that you thought it was nine years ago?

A. I made a mistake there.

*The SURROGATE*: I see it is underlined in the margin here some fourteen or fifteen years ago.

A. Yes, sir ; I think it was at the time he came into 1051 the room in that violent manner.

Q. It was fourteen or fifteen years ago ?

A. Yes, sir.

Q. That was the occasion of your meeting in the room ?

A. I think it was.

Q. You think about a year after that that there was another unpleasant meeting between you ?

A. Well, yes ; sometime I should think less than a year ; if I was going to fix the date, I would say six 1052 months, but I am not positive of the time.

Q. Now, sir, please tell me just how that took place ?

A. Well, he met me in the dusk of the evening in the barn, and wanted some money.

Q. What did you do—did you give it to him ?

A. I gave him \$200.

A. Use his language ; I want the matter stated just as it took place between you ?

A. I don't think that I can use his language ; he said many things and talked very fast, and insisted upon my 1053 giving him money ; he said I must give it to him ; that he would kill me ; you know, under those circumstances, we are not apt to remember the precise language.

Q. Well, it is important ; it is due to the case and ourselves, that you should give as near as you can remember, the language ?

Q. I give it as near as I can.

Q. You stated that he threatened to shoot you afterwards ; I want to know how those threats came up, and what they were about—now, then, give us the next oc- 1054 casion when he threatened to shoot you ?

A. I don't think I can fix upon any time of the next occasion ; there was a great time.

Q. Then the occasions you have given us are all the occasions that you can state the circumstances connected with such threats made by him—you have given us now three occasions in which he threatened to shoot or kill you—you are not sure in regard to this last, whether he said anything about shooting but threatened—those are

1055 the only occasions then, you can give us the circumstances or conversation which passed between you or any part of it?

A. Well, there are two others that are recalled by me.

Q. Well?

A. His treatment was very severe and boisterous towards me in regard to the transfer of the trusteeship.

Q. Well, give us the occasion?

A. Well, that was the occasion.

Q. Well, the time when—I suppose, during the transfer, there were various meetings—do you mean the time you signed the deed for the transfer, or the agreement to transfer?

A. No, not when I signed the deed.

Q. It was before that then?

A. It was before that; I was very reluctant to have him take the trusteeship at all.

Q. Well, state what took place between him and you—what did you say to him, and he to you, upon that occasion that he was so boisterous?

1057 A. Well, I told him the trusteeship was very well where it was, and I thought it was more proper for Mrs. Nesbit to hold it than it was for him to hold it.

Q. What answer did he make to that?

A. He said that he was the natural guardian of his mother; that he had a right to the trusteeship and he would have it.

Q. Were any legal steps taken in regard to it?

A. Well, he was very boisterous in that matter.

Q. I don't ask you how boisterous he was; give us his language and his manner?

1058 A. Allow me to say that he was a good deal boisterous in that matter, Mr. Lyon, if you please.

Q. You have no right to say it unless I ask you?

A. Well, ask me a direct question and I will answer it.

Q. I don't want you to characterize his conduct, but to tell me just what he said and did; that is my right, and I want to be as pleasant about it as I can?

A. Well, what he did—I will tell you what he did.

Q. You have got as far as this, that he said he would have the trusteeship?

A. Yes, sir.

1059

Q. Now, then, my next question was whether any legal steps were taken in that direction?

A. All the legal steps that I know were taken in that direction, were such legal steps as were necessary to change the trusteeship from Mrs. Nesbit to him.

Q. That was done?

A. That was done.

Q. Now, then, was that what you mean by his boisterous conduct—his saying to you that he would have the trusteeship changed?

1060

A. No, sir; that is not near all.

Q. Why didn't you go on and tell us what else he said?

A. Because you stopped me.

Q. No, I didn't; you left it and went on other subjects; if you tell me what else he said, it comes within my question?

A. He said the trusteeship should be changed?

Q. What else did he say?

Q. Well, he said a great many things, I don't know as I can tell you; he said so much as to frighten Mrs. Nesbit so that she dared not hold the trusteeship any longer.

[Mr. LYON objected to the answer of the witness, and requested the witness to state what Carlton said, and said they could judge for themselves whether it ought to frighten or not.]

Q. Mrs. Gates did assent that he should become the trustee?

A. Yes, sir.

Q. Didn't she urge it?

A. Yes, sir.

Q. Have you ever stated that if you had taken him and trained him as he ought to have been you would have made a man of him, but as you could not do that without separating him from his mother you gave it up, or something of that description?

- 1063 A. I think I have.  
 Q. That is your opinion now, is not it?  
 A. That is—I don't know; he was a good deal spoiled before this.  
 Q. Well, you have stated that as an opinion that there was a time at any rate; now, you think that if you had taken him and trained him you would have made a man of him?  
 A. Yes, sir.  
 Q. Now, these differences you say that have occurred  
 1064 in his presence with his mother in regard to money; have not they, at times, been attended with a good deal of violent language, harsh language, backwards and forwards between his mother and yourself?  
 A. Not very, sir.  
 Q. Not very violent?  
 A. No, sir.  
 Q. I would like to refresh your recollection about that; have not you called her opprobrious names in his presence, and upon more than one instance used expletives  
 1065 with it on this subject of money—have not you applied a term to her in his presence other than that of your wife or his mother?  
 A. If I understand your question I answer in the negative.  
 Q. I will put it, have you ever in his presence called her a “damn critter?”  
 A. Damn creature.  
 Q. “Critter?”  
 A. I don't know that I have.  
 1066 Q. Are you prepared to say that you never have addressed language of that description to her in his presence when you were quarreling about money?  
 A. I won't say I have.  
 Q. Will you say you have not?  
 A. No.  
 Q. Has not his mother in his presence ever said to you that you were acting the part of a harsh, cruel father in keeping money from him?  
 A. I don't remember exactly the expression, I think likely so.

Q. Well, expressions of that kind ? 1067

A. Yes, sir.

Q. Were they not frequent and common ?

A. Well, not very frequent.

Q. Now, before this meeting at Dr. Hulbert's office, when the subject of this money business was up, has she never threatened to sue you in his presence for those deficiencies ?

A. For money I owed.

Q. Yes, sir, for money she claimed that you owed her in some form or way ? 1068

A. I don't remember.

Q. My question is whether she has never, when he was present, threatened to sue you for money in some form she claimed you owed her ?

A. I should think not.

Q. This property at Yonkers, which was the subject matter of this—did not she claim that it was purchased by money which belonged to her, which was her own money at the time you married her, or came to her subsequent ? 1069

A. I never heard it.

Q. You never heard that claim made by her ?

A. No, sir ; I don't think I have.

Q. When did Mr. Hulbert first come to Yonkers ?

A. I don't know, sir ; it is long ago.

Q. Well, about—you can tell within twenty years probably ?

A. I cannot tell with any kind of certainty at all ; he has been there a great many years ; that is all I know about it. 1070

Q. When he first came there you became acquainted with him immediately upon his first coming there, did you ?

A. Yes, sir.

Q. Where did he stay when he first came to the village ?

A. He was a good deal at our house.

Q. Was he your guest at all when he first came there ?

A. Yes, sir.

1071 Q. What were your relations with him during that time?

A. Amicable and pleasant enough.

Q. Were not they very friendly?

A. Yes, sir.

Q. Was there anybody in Yonkers with whom you were as intimate as you were with Dr. Hulbert?

A. Yes, sir.

Q. There were other people that you were as intimate with as you were with him?

1072 A. Yes, sir.

Q. Were there any that you were more intimate with?

A. I should think there were some.

Q. How was it with Mrs. Gates, was she friendly with him?

A. She was.

Q. He was a friend of the family, then, was he?

A. Yes, sir.

Q. Will you look at that signature and tell me if that is yours without reading the letter, which I do not propose you shall read any more than to see if there is any part of the contents which is not in your handwriting?

1073

A. That looks like my signature.

[The letter was marked for identification Proponents' Exhibit "A," November 19, 1869. J. B. S.]

Q. Run your eye over, and see whether the contents of that paper are in your handwriting?

1074 A. Part of it looks like my handwriting, and part of it doesn't.

Q. What is the part of it that is not in your handwriting?

A. That looks like my handwriting—the first page.

Q. The handwriting on the first page, marked "B," before reaching the word "or," looks like your handwriting?

A. Yes, sir.

[The letter was marked for identification Proponents' Exhibit "B," November, 19, 1869. J. B. S.]

*Re-direct examination by Mr. VAN PELT :*

1075

Q. In reference to the substitution of the twenty thousand dollars bank stock in the place of the three thousand dollars annuity to Mrs. Gates, did Mrs. Gates consent to that arrangement ?

A. She did.

Q. And Carlton ?

A. He did—yes.

Q. (*By Mr. LYON*) : In that connection, please say what bank that was on ?

A. The American Exchange Bank.

1076

Q. At whose instigation and demand had this trusteeship been changed from Mrs. Nesbit to Carlton ?

A. Carlton's.

Q. And his mother aided him in pressing that demand, didn't she ?

A. I don't know that Mrs. Gates wished for the change, but Carlton annoyed Mrs. Nesbit so much that she could not hold it.

Q. Do you know whether he made any threats to Mrs. Nesbit of what he would do if she did not surrender it to him ?

1077

A. I don't think I could say.

Q. Carlton, however, was the cause of the transfer being made ?

A. Altogether, I think.

Q. You have stated that you had difficulties with Mrs. Gates when you left your home—did all of those difficulties grow out of Carlton's conduct ?

A. I think, if it had not been for him, I would have had no serious difficulty at all with Mrs. Gates.

1078

Q. They were all traceable to Carlton ?

A. All.

Q. Who paid for Carlton's education ?

A. I paid for it.

Q. Are you able to state about how much money you gave him at different times altogether ?

A. That would be a very difficult thing to do ; I gave him what was necessary for his comfortable support, and expenses through his boarding-school life, and through his college life, and through his professional experience.

1079 Q. Are you able to state how much you gave him in money directly, without including the expense of his education and his board?

A. I never gave him any specific sum during the course of his education.

Q. I want to get at the amount of money you gave him in the aggregate, independent of the bills you paid for his education and board?

A. Well, there was a time I gave him twelve hundred dollars a year; I gave him that from the time, after his education—after he got through his education—until this arrangement was made for the trust fund.

Q. That continued down to the time the trust was made?

A. Down to the time of the trust fund.

Q. Did he ever earn a dollar in his life to your knowledge?

A. I don't know that he ever did; I don't think that he ever did.

Q. Was Mr. Hulbert on such terms of intimacy with you and your family as to have personal knowledge as to the state of your domestic affairs?

A. In what relation.

Q. In relation to between Carlton and yourself—as between Carlton, Mrs. Gates and yourself?

[Mr. LYON objected to the counsel asking for an inference; objection overruled; exception.]

A. I should think he was.

1082 Q. That is, I mean in the early years of Mr. Hulbert's being in Yonkers.

*By the* SURROGATE: Did he know—that is the question—did Doctor Hulbert know of the state of affairs in your family?

A. I am not able to say positively whether he did know or not.

Q. Were they not freely discussed, on this occasion, when you and Carlton met at Mr. Hulbert's office?

A. Carlton Gates said a great deal on that day ; I 1083  
didn't answer much of what he did say.

Q. That was in Mr. Hulbert's presence ?

A. In Mr. Hulbert's presence ; if I have a right idea  
of the meeting, I don't remember any other, and don't  
remember of Mrs. Gates being present at that meeting ;  
she was not, I think.

Q. Did you ever speak with Mr. Hulbert confidentially  
about your family affairs ?

A. I have.

Q. Did you ever possess him of the facts ? 1084

A. I have told him a good many things.

Q. Substantially, how you were situated ?

A. I think I have.

Q. Was you his family physician ?

A. I was.

Q. For how many years ?

A. All the time that he lived in Yonkers.

Q. How much of a family had he ?

A. I think, five children—four or five children.

Q. Did you attend his family gratuitously, or how— 1085  
did you ever make any charge to him for services ?

A. No.

Q. You looked upon him as a friend down to what  
time ?

[Objected to.]

Q. Did you consider him and treat him as a confiden-  
tial friend ?

A. I did.

Q. Down to what time ? 1086

A. Well, I considered Mr. Hulbert my friend, and was  
his friend until the last year or so.

Q. What was the occasion for considering him other-  
wise ?

[Objected to ; objection overruled ; exception.]

Q. Down to what time did your confidence continue  
unimpaired ?

1087 A. Until within a year, or a year and more.

Q. And what was the occasion of feeling different towards him?

[Objected to; objection overruled; exception.]

A. Well, a peculiar visit Mr. Hulbert made to our house sometime less than a year ago.

Q. The one you described in your direct examination?

A. The one that I described there was the first that  
1088 decided my opinion that Mr. Hulbert was wrong.

Q. Had you told Mr. Hulbert in your interview with him that Carlton had derived all the property he possessed from yourself and Mrs. Gates?

A. I have told Mr. Hulbert so.

*Re-cross examination, by Mr. LYON:*

Q. When did you tell him this?

A. I think I have told him so at several different times within the last four years.

1089 Q. Did Mr. Hulbert have charge of a parish in Yonkers all the time he was there—was he a clergyman at the time of your attending him?

A. He was.

Q. Was it your habit to charge clergymen for professional services when you attended them?

A. The clergyman of the church I go to I don't charge usually.

Q. You then have been on sufficiently intimate terms with Dr. Hulbert to communicate to him the circum-  
1090 stances of your family?

A. I don't think that I have communicated to him all the circumstances of my family—I don't think I have.

Q. Well, these circumstances between yourself and Mrs. Gates?

A. No, I don't think I have communicated to him the circumstances between Mrs. Gates and myself.

Q. You have communicated to him enough to make him acquainted with the fact that there was a great state of domestic unhappiness between you and Mrs. Gates?

A. don't know that he could draw that construction 1091  
from anything I communicated to Mr. Hulbert—that  
there was a great state of unhappiness between us.

Q. What did you mean, then, by the answer that you  
gave to your counsel that he was acquainted with all  
those facts in regard to your family?

A. Did I say that—that he was acquainted with all  
the facts in regard to my family.

Q. Well, substantially, I think so?

A. Well, Mr. Hulbert was intimate with our family and  
knew a great deal of our family, but he didn't know it 1092  
all.

Q. Well, your communications with him, were they  
sufficient to indicate that as between yourself and Mrs.  
Gates there was a decided difference of opinion, and that  
that difference related to Carlton and his education and  
treatment—bringing up?

A. Yes, sir.

(Signed) A. W. GATES.

ANN FITZPATRICK, being sworn by the SURROGATE in 1093  
support of said will, was examined by Mr. LYON, and  
testified as follows:

Q. Where do you live now?

A. Yonkers.

Q. Did you live at any time at Doctor Carlton Gates'?

A. Yes, sir.

Q. What capacity was you in there?

A. Cook.

Q. Do you recollect when you went there?

A. The 9th of August.

1094

Q. Do you recollect the day of the week that was?

A. Monday morning.

Q. You continued there as cook up to the time of his  
death?

A. Yes, sir.

Q. And a few days after you remained in the house?

A. Yes, sir.

Q. Mrs. Gates left, how long after you went there?

- 1095 A. On the Wednesday morning.  
 Q. At that time, on that Tuesday or Monday, did she give you any instructions in regard to the ice?  
 A. She told me to meet the ice man out and tell him to leave five pounds of ice instead of twenty-five pounds.  
 Q. Did you receive any instructions from Carlton in regard to a larger quantity of ice?  
 A. He said he wanted twenty-five pounds.  
 Q. When was it he told you to get twenty-five pounds?  
 A. He didn't tell me, he told my sister.
- 1096 Q. The directions that Mrs. Gates gave you were that instead of getting twenty-five pounds you get but five pounds?  
 A. Yes, sir.  
 Q. Was there any refrigerator in the house at that time?  
 A. No, sir.  
 Q. How was the ice kept?  
 A. In a dish pan.  
 Q. On the Sunday after he was buried what occurred
- 1097 in regard to food for yourself and your sister—what was done by Mrs. Gates, if anything, in the way of locking that up?  
 A. We had no bread on Sunday—she locked the bread.  
 Q. You had no bread all day?  
 A. We had no bread for our dinner; we were not in for tea.  
 Q. That was locked up by her, was it?  
 A. Yes, sir.
- 1098 Q. What, if anything, was said by her to you in regard to you and your sister being crazy?  
 A. She said I was crazy.  
 Q. What was the reason for saying that?  
 A. For not carrying beds down stairs.  
 Q. State what took place between you and her on that subject?  
 A. I refused doing it; she had me taking up carpets and shaking them, and I objected.  
 Q. What did you say?

A. She said she wouldn't pay me if I didn't do it; I 1099  
told her I was already paid; she asked me by who; I  
told her, Doctor Hulbert.

Q. Well, what did she say in answer to that, after you  
told her that Doctor Hulbert had paid the wages?

A. She said she would get him arrested, and get all  
arrested who went—did not put in their time.

Q. Did you have any occasion to take anything to him  
after his mother left and up to the time of his death?

A. No, sir.

Q. Were you in his room at all? 1100

A. Yes, sir.

Q. On what occasion?

A. My sister was busy one morning and told me that  
he wanted me to go up and roll a blanket around and  
under his feet—he was sitting in the chair—to raise his  
feet up.

Q. Did you go up stairs?

A. Yes, sir.

Q. Did you go into the room where he was?

A. Yes, sir. 1101

Q. And do as he desired you to do?

A. Yes, sir.

Q. Were you in the room at any other time before his  
death, except on that occasion?

A. Yes, sir; once, and —

Q. On any of those occasions was there anything  
strange or uncommon in his conduct to you?

A. No, sir.

Q. Like all other persons?

A. Yes, sir. 1102

Q. Who engaged you?

A. Doctor Gates himself.

Q. To come there for that purpose—as a cook?

A. Yes, sir.

Q. Did he ask you in regard to your proficiency as a  
cook?

A. Yes, sir; he asked me if I was a good cook; I told  
him I was not a first-class cook, but that I could do  
plain cooking; he asked me if I could make jellies and

1103 custards if he wanted them, and I said "Yes;" he asked me if I was a good washer and ironer, and I said I was.

Q. State, if he gave you any directions in regard to washing his shirts?

A. He said he wanted to see me in regard to some shirts that he wanted washed; he told me that he wanted them washed in cold water and hung up where the sun could not get on them, and, in ironing them, to iron them on the wrong side—that he didn't want the

1104 colored worsted work to fade.

Q. Was it worsted work?

A. Yes, sir.

Q. Did you do them according to his directions?

A. Yes, sir; he said they were done very nice.

Q. He said they were satisfactorily done in that way?

A. Yes, sir.

Q. When was this, in reference to the time you went there, on Monday—what day was that?

A. That was on the Monday following.

1105 Q. It was on the Monday following that this conversation in regard to the shirts took place?

A. Yes, sir.

Q. They were fine shirts, were they?

A. Yes, sir.

Q. Now, on the day you left, what was done in regard to locking up the coal, and by whom?

A. The coal was locked up the day I left, and by Mrs. Gates.

Q. Was there anybody there washing that day?

1106 A. Yes, sir.

*Cross-examined by Mr. VAN PELT:*

Q. Where had you worked before you went to Doctor Gates?

A. I worked in Yonkers.

Q. Where?

A. At Mr. Bright's.

Q. How long had you lived in Yonkers?

A. I had lived in Yonkers four or five years.

- Q. How long have you worked out? 1107  
 A. Ten years.  
 Q. In this country?  
 A. Yes, sir.  
 Q. With how many different families?  
 A. Nine or ten, I am not sure which.  
 Q. How many different families?  
 A. I could not tell you.  
 Q. A large number?  
 A. No, sir ; not a large number.  
 Q. About how many? 1108  
 A. I couldn't tell.  
 Q. Twenty?  
 A. No.  
 Q. Ten?  
 A. No.  
 Q. Five?  
 A. May be five, or more.  
 Q. You have never worked with but five different families?  
 A. I may have worked for more, I say. 1109  
 Q. Who sent for you to come to Doctor Gates' house?  
 A. Madam Migy came to me.  
 Q. Did she come to you herself or send?  
 A. She came herself.  
 Q. Where did you go when you went to the house?  
 A. I went to the kitchen.  
 Q. Who did you see?  
 A. Mrs. Gates.  
 Q. Did you have any talk with her?  
 A. She asked us if we were the girls, and told us to go 1110  
 into the kitchen.  
 Q. Is that all?  
 A. Yes, sir.  
 Q. Why didn't you talk more with her?  
 A. She didn't talk with me.  
 Q. Who asked you up to Carlton's room?  
 A. Madame Migy.  
 Q. In Mrs. Gates' presence?  
 A. I don't know that it was in Mrs. Gates' presence ; I  
 can't remember.

- 1111 Q. Was Madame Migy present when you talked with Carlton?  
 A. Some of the time.  
 Q. She seemed to have the charge of the house, did she?  
 A. She was a visitor there ; I don't know whether she had charge or not.  
 Q. Who seemed to have most charge of the house—she or Mrs. Gates?  
 A. I couldn't say.
- 1112 Q. Did you see Mrs. Gates do anything?  
 A. She was at her breakfast after I got there.  
 Q. Did you see her have any charge of the house?  
 A. She was down stairs—in and out of the basement and kitchen some of the time ; didn't pass any remarks.  
 Q. How much were you to be paid a month?  
 A. Fourteen dollars.  
 Q. For how long a time were you hired?  
 A. A month.  
 Q. How long did you stay?
- 1113 A. Three weeks.  
 Q. Just three weeks?  
 A. Yes.  
 Q. During that time how many times did you see Carlton?  
 A. I couldn't say how many times.  
 Q. How many times are you now certain that you saw him?  
 A. Four or five times.  
 Q. Did you ever see him out of his room during that
- 1114 time?  
 A. Once.  
 Q. Where?  
 A. The back stairs.  
 Q. What was he doing there?  
 A. He came down and wanted to know if his mother had gone.  
 Q. Was he dressed?  
 A. Yes, sir ; he had his morning frock on ; he came out of his bed-room.

- Q. His dressing-gown? 1115
- A. Yes, sir.
- Q. He came out of his room to the head of the stairs, to see if his mother had gone out of the house.
- A. Yes, sir.
- Q. What did he say?
- A. He called me and asked if his mother had gone.
- Q. Out of the house?
- A. Yes, sir.
- Q. Did he order her out of the house?
- A. I don't know. 1116
- Q. What language did he make use of to you?
- A. That is all he said; I said she was gone and he called Madame Migy.
- Q. Did he say that he ordered his mother out of the house?
- A. I didn't hear him say so.
- Q. The fact is his mother had then gone?
- A. Yes, sir; she was gone out.
- Q. What else did you hear him say then?
- A. That is all. 1117
- Q. Where was you?
- A. I was in the kitchen.
- Q. Did he speak loud?
- A. Yes, sir; loud enough for me to hear in the kitchen.
- Q. He was on the second floor above?
- A. He was in the dining-room at the top of the stairs that led down to the kitchen.
- Q. Did you ever see him out of his bed-room but that time?
- A. That is all. 1118
- Q. When did you next see him?
- A. I saw him the day he sent for me and wanted a blanket under his feet; he was sitting on a chair in his room; he wanted his feet raised.
- Q. How many days was that before he died?
- A. I don't know.
- Q. You went up and put a blanket under his feet?
- A. Yes, sir.
- Q. What did he say to you then?

- 1119 A. He said that would do.  
 Q. What else did he say to you?  
 A. Nothing.  
 Q. How long were you in the room?  
 A. About two minutes.  
 Q. Who else was there?  
 A. Miss Sault came in.  
 Q. While you were there?  
 A. Yes, sir, and my sister.  
 Q. When did you see him again?
- 1120 A. I saw him one day—I was passing the room and he was asleep.  
 Q. He didn't say anything to you then, did he?  
 A. No.  
 Q. When did you see him again?  
 A. The day he died.  
 Q. What time in the day?  
 A. It was about one o'clock, I think.  
 Q. Who was there?  
 A. There was the nurse, Miss Sault and Mrs. Migy.
- 1121 Q. Who else?  
 A. That is all.  
 Q. Were you in the room?  
 A. I just went in.  
 Q. Just looked in?  
 A. Yes, sir.  
 Q. Were you in the room after he died?  
 A. I was in just after he died—he had just died.  
 Q. Who was with him when he died?  
 A. The nurse, Miss Sault, and Mrs. Migy.
- 1122 Q. Those three alone?  
 A. Yes, sir.  
 Q. Now, you have stated all the times you saw Carlton during the time you were there?  
 A. I didn't see him all the time.  
 Q. You have given me now all the times you saw Carlton, during the time you were there?  
 A. Yes.  
 Q. You say Mr. Hulbert paid you?  
 A. Yes.

- Q. Where? 1123
- A. At Mr. Rhinefelder's.
- Q. How did he come to pay you there?
- A. He sent for me.
- Q. Who did he send?
- A. I don't know.
- Q. What day did he send?
- A. Saturday, I think it was; I don't know; I am not sure what day it was; it was Saturday, I think.
- Q. What day did you go away?
- A. Monday. 1124
- Q. And did you stay over until Monday after you were paid?
- A. Yes.
- Q. How much did he pay you?
- A. \$14.
- Q. For the whole month?
- A. Yes.
- Q. Did he tell you that you had been left a legacy of \$50?
- A. I don't remember. 1125
- Q. Well, try and remember now, if you please; did he tell you Carlton had left you \$50?
- A. I think he did.
- Q. You and your sister?
- A. I think he did.
- Q. The other witness, Fitzpatrick, was your sister?
- A. Yes.
- Q. What reason did he give you for sending for you to come down to Rhinefelder's to receive your pay?
- A. I don't know. 1126
- Q. You didn't purpose to go there, did you?
- A. No, sir.
- Q. You went because he sent word for you to go there?
- A. Yes, sir.
- Q. Did he tell you not to remain with Mrs. Gates any longer?
- A. No, sir; he told us to remain until Monday, and if we made another agreement with her, that he would be well pleased.

1127 Q. What did you do after you went back—after getting the money—during the time you were there?

A. Well, I was house cleaning part of the time?

Q. Washing your own clothes, also?

A. Yes; I washed my own clothes.

Q. On how many occasions did you see Mrs. Gates during the time you were there?

A. Mrs. Gates wasn't there—my time there—only a few days.

Q. During the time you were there, how many days  
1128 did you see her?

A. I saw her every day.

Q. What was she doing?

A. She was helping to house clean some of the time.

Q. Cleaning house?

A. Yes, sir.

Q. Did she seem to have charge of the house?

A. Yes.

Q. After the housekeeper went?

A. Yes, sir.

1129 Q. Who was the housekeeper?

A. Miss Sault.

Q. Did she go away?

A. Yes, sir.

Q. When did she go?

A. She went—it was on Saturday I think.

Q. Did she come back again?

A. No, sir.

Q. Not at all?

A. No, sir, not that I know of—not while I was there.

1130 Q. Didn't I understand you to say that she was there when Carlton died?

A. That was afterwards.

Mr. LYON: She is speaking of the time after Carlton died.

Q. When did Mrs. Gates go away from the house?

A. She went the Wednesday morning—I went there on Monday and she went Wednesday.

Q. She didn't return again until Carlton was dead? 1131

A. She came two or three days back I am not sure which.

Q. Where did she go?

A. She went to her room.

Q. To her own room?

A. Once she came into the kitchen.

Q. How long did she stay?

A. A few minutes.

Q. Was she told to go away again?

A. I don't know; I didn't hear anybody tell her to go away. 1132

Q. Don't you know that she was not to remain in the house?

A. I don't know.

Q. Who had charge of the house when she went away?

A. Miss Sault.

Q. Had Mrs. Migy also?

A. I don't know.

Q. Did either Miss Sault or Mrs. Migy tell you to keep Mrs. Gates out of the house? 1133

A. No, sir.

Q. Not to let her in?

A. No, sir; I don't remember.

Q. Did you see Mr. Hulbert there?

A. Yes, sir.

Q. What was he doing?

A. I didn't see him doing anything.

Q. How often did you see him there, or how much of the time?

A. I couldn't say how many times. 1134

Q. Every day.

A. No, sir, I didn't see him there every day.

Q. Was he there when Carlton died?

A. No, sir.

Q. When did he go away?

A. On the Thursday before, or Friday, I am not sure which.

Q. You were told you were left fifty dollars by Carlton?

A. I am not sure whether I was told it or not; I think Mr. Hulbert told it.

- 1135 Q. Had you any previous acquaintance with Carlton?  
 A. No, sir.  
 Q. Were you ever left a legacy before?  
 A. No, sir.  
 Q. (*By Mr. LYON*): On this occasion that you saw Carlton out of his room in his dressing-gown, what day was that, with reference to your going there—you went there on Monday, what day was it he came out and asked that question—if his mother was gone?  
 A. Wednesday morning.
- 1136 Q. Wednesday succeeding the Monday you went there?  
 A. Yes, sir.  
 Q. (*By Mr. VAN PELT*): Did you ever hear Carlton speak of his mother?  
 A. He said if she said anything to us not to mind her.  
 Q. Did he say she was insane—out of her mind?  
 A. He said she was a wicked woman.  
 Q. Did he tell you who told him so?  
 A. No, sir.  
 Q. Did he say he would not have her about the house?
- 1137 A. He said when he got a housekeeper it would be more satisfactory.  
 Q. And that she must go?  
 A. Yes, sir.  
 Q. On how many occasions did you go without bread while you were in this house?  
 A. I don't remember only Sunday.  
 Q. Only that Sunday?  
 A. Saturday night I don't know what we had.  
 Q. That was after Carlton was dead, wasn't it?
- 1138 A. Yes, sir.  
 Q. Where was the bread?  
 A. It was in the basement, locked, down-stairs.  
 Q. Did Mrs. Gates give you orders to do work for her after that?  
 A. I don't remember.  
 Q. After you were paid up?  
 A. She wanted us to put in our month.  
 Q. Did you?  
 A. No, sir.

Q. You wouldn't do it, would you? 1139

A. No, sir.

Q. Didn't you tell her that you wouldn't work your month out?

A. I told her that we would stay until Monday to oblige her.

Q. You had been paid for the whole month?

A. Yes, sir.

Q. But you would not stay the rest of the month?

A. No, sir.

Q. About this ice—do you know how much twenty-five 1140  
pounds of ice is?

A. No, sir.

Q. Do you know how much five pounds is?

A. No, I don't.

Q. How often did the ice-man come?

A. Every day.

Q. Don't you know that five pounds of ice a day was sufficient for all the wants of that house?

A. No, sir; I know he used a great deal of ice—a  
great many times a day. 1141

Q. Don't you know that five pounds of ice a day were sufficient for that house?

A. Not without an ice chest, I don't think; we wouldn't have had enough with five pounds; he used a great deal of ice some days.

Q. Don't you know that there was large quantities of it wasted and not used?

A. I don't know it was wasted.

Q. Don't you know that there was large quantities of it not used? 1142

A. I don't know.

Q. (*By Mr. LYON*): This conversation in regard to the housekeeper coming there—when did you have that conversation with Carlton?

A. The day he hired us.

(Signed) ANN FITZPATRICK.

1143 WILLIAM ROMER, being called on behalf of the proponents and sworn by the SURROGATE, was examined by Mr. LYON, and testified as follows :

Q. What is your profession ?

A. An attorney and counsellor at law.

Q. Where do you practice law ?

A. In the town of Yonkers, in this county.

Q. Did you know Carlton's Gates in his lifetime ?

A. I did.

1144 Q. Did the instrument that was offered for proof her—you saw it at the time it was offered ?

A. I did.

Q. Did you prepare that paper for Dr. Gates ?

A. I did.

A. Will you state the occasions—interviews with him—which led to the execution of the paper which was finally executed—that one that was in evidence here ?

A. It commenced on Tuesday evening and terminated with the execution of the will.

Q. That was the Tuesday—August 17th was it ?

1145 A. Tuesday, August 17th.

Q. About what time in the day was it ?

A. About seven o'clock in the evening ; I went there and remained there from an hour to an hour and a half.

Q. State what passed between him and yourself on that occasion ?

A. The witness here produced a memorandum ; I went into the room ; he was in a partial doze ; he awoke ; we passed the compliments of the day ; he said : " Mr. Romer, have you come upon business ? " I told him

1146 I had ; he told me to go to the door, open it, and see where Higgins was, and see that no one was near the door ; to lock the door—" come in and lock the door "—which I did ; he commenced giving me directions, and I was listening, when he said : " Mr. Romer, you will have to write ; you will find paper on my portfolio," (pointing to the table on the westerly side of the room,) " and a pen ; " I told him I had a pencil and paper in my pocket ; I commenced to write as he dictated ; I took not only the substance, but the language of the dictation ; he then

gave me the substance of all the testamentary bounties 1147  
 in his will, excepting that with reference to the village of  
 Yonkers; he told me to go to the secretary or bu-  
 reau, and upon the top of it on the west side, mentioning  
 a particular spot, I would find a card; "bring it to me;"  
 I did so; it was the card of Dr. Darling; he said he de-  
 sired to give Mrs. Darling, wife of Dr. Darling, his par-  
 ticular friend, \$10,000; while I was conversing with him  
 he interrupted me and said: "Don't talk so loud;" I  
 said: "Doctor, my voice is naturally loud, and I did not  
 observe that I was speaking so loudly;" at that time he 1148  
 dictated in detail a clause with reference to his suspicion  
 of being poisoned; when he came to the money to be ap-  
 propriated to a criminal prosecution, he asked me what  
 amount I thought would be requisite; I told him I  
 did not know anything about that; he asked if \$50,000  
 would be sufficient; I told him that I thought it was  
 more than ample; he suggested \$25,000; I told him I  
 knew nothing about it, and could not give him any ad-  
 vice on that subject; it was left uncertain.

Q. The amount was left uncertain?

1149

A. The amount; he also, at that time, gave me a  
 schedule, or portion of a schedule of his assests and  
 property; when the interview was nearly completed, he  
 told me to call Higgins; I called Higgins; he came to  
 the door; he told Higgins to call Mr. Hulbert; Mr. Hul-  
 bert came to the door; he said: "Mr. Hulbert, get me  
 that bunch of keys;" and I think he named the place  
 where he would find them; they were brought—ten or  
 fifteen keys upon a ring; he took one key between his  
 finger and thumb, separating it from the rest; "take 1150  
 that key; go to my library—in my library desk in a  
 drawer"—specifying it; "I have forgotten which, you  
 will find a paper upon the top, bring it to me;" the  
 paper was brought—the door was again locked; he took  
 the paper in his hand.

Q. Did Dr. Hulbert retire?

A. Dr. Hulbert retired, and I was cautioned again  
 about seeing that nobody was near the door; he took  
 the paper; "this is my mother's will;" he looked at it

1151 carefully for sometime—turned it over—read it ; handed ii to me.

Q. Did he ask for a pencil ?

A. Not at that time ; he handed it to me and told me to read it ; he was very much exhausted with the interview and he remained silent, and I took the will and read it to myself ; having done so, I handed it to him ; he asked me if I had a pencil ; I told him I had ; “give it to me ;” I took the pencil out of my pocket and handed it to him ; he took the will and marked one or  
1152 two places ; I then said to him : “The interview has been quite lengthy, doctor, and you seem exhausted ; perhaps we had better delay it until another day ;” he looked at me a few moments, and he replied that he thought he had better do so ; that was the substance of the interview on Tuesday night ; I retired and left him.

Q. In that connection, this paper that he spoke of as the will of his mother, was it an original paper or a certified copy ?

A. It was a certified copy of the will.

1153 Q. When did you next see him ?

A. The next interview I had was upon Wednesday morning ; I went to his house, in the neighborhood of eleven o'clock—between ten and eleven to his room ; he was then occupying the south-east room of the house ; after speaking with him, inquiring about his health, he invariably answered me that he was very sick ; I asked him whether he would desire that his will should be read in the presence of a witness ; the witnesses had been named before.

1154 Q. Well, state now how that came about, and who named them, and so on ; state the conversation in regard to that ?

A. The conversation in regard to the witnesses occurred upon Tuesday night ; I told him it would be necessary for him to have witnesses to his will ; he suggested the names of Mr. Farrington and Mr. Radford ; I suggested the name of Judge Baldwin, who lived adjoining then ; upon Wednesday morning, after I asked him if he would desire to have the will read in the presence

of a witness, he said he should ; I don't know whether I 1155 suggested or he suggested Mr. Radford ; he lived adjoining ; it suggested itself to my mind, at least ; without reading the draft which I had prepared I called upon Mr. Radford ; we went up to his room ; Mr. Radford sat by the edge of the bed, I stood at the foot of the bed ; he again cautioned me about closing the doors—both the door that led to his room, and the door that led from the hall or a little ante-room ; Mr. Radford made the remark that he did not think he was so sick—that he knew he was ill, but that he did not suppose that he was so un- 1156 well as he found him or that he should have called upon him ; I interrupted the conversation between Mr. Radford and himself, and said that I was ready to read to him the will prepared ; he told me to go on and read it ; I commenced reading ; before I had proceeded far he told me to repeat that sentence again ; three or four times, during the reading of the will, he asked me to repeat ; when I came to the clause in reference to the appropriation of 25—or the appropriation of money for the prosecution ; I had inserted it \$10,000, on my own 1157 responsibility, as I thought that was sufficient ; he said : “ Mr. Romer, what did we fix that at ? ” I told him it was left uncertain ; that \$50,000 and \$25,000 had been mentioned ; he says : “ Make it \$25,000 ; I don't recollect of any other alteration now that was made in that draft that I read to him at that time ; my interview lasted in the neighborhood of fifteen minutes ; I left him in company with Mr. Radford.

Q. When did you next see him that day ?

A. I think it was after I dined ; I went again to read to 1158 him the draft—the engrossed copy of the draft.

Q. This was a mere draft that you read to him ?

A. That was a draft I read in the presence of Mr. Radford ; I went to read an engrossed copy.

Q. Well, state what occurred then ?

A. I omitted to state that on the interview with Mr. Radford, that when the witnesses were named, and arrangements were being made to have the witnesses present for the execution of the will upon the subsequent

1159 day that Mr. Radford suggested the name of Mr. Rose, as both himself and Judge Baldwin were old men, and that it would be better to have a younger man ; he acquiesced in that suggestion, that is, the interview upon Wednesday ; on the second interview on that day, I went in, locked the door, asked him how he was ; he said he felt very sick ; I told him I thought he was going to get well, and he only replied by saying that he felt quite sick ; he said to me : “ Mr. Romer, you have omitted an important clause in my will.”

1160 Q. Was that after you had commenced reading it to him—this engrossed copy ?

A. That was after I had read the engrossed copy to him : “ you have omitted an important clause of my will ; I don’t see how you dared assume the responsibility ; I don’t see how you dared to do it ;”—doctor, I thought—I asked him what the clause was ; he said it was in reference to his mother and the Nesbit family ; Doctor, I think that that is unimportant in the will ; the relations of the family were well known, and could

1161 be proven by witnesses in case that the will was contested, and I did not think it formed an important part of your will ; “ I consider that the very basis of my will ; I don’t see how you dared assume the responsibility of leaving it out.”

Q. Now state the clause which was the subject of conversation—the clause which you had left out, and the clause which he had directed to be inserted ?

A. I will show you the clause in the will ; it was the seventh clause ; “ As proof that I considered my mother  
1162 sound in mind &c.”

Q. Just read the whole of that portion of the clause which you had omitted, and which he had directed to be put in ?

[Witness read the seventh clause down to the words “ Mr. and Mrs. Darling can fully testify.”]

A. That was one part of it ; no, I am wrong entirely ; it was the ninth clause :

[The witness here read the ninth clause from the 1163 original will.]

that clause I had drawn, but had not incorporated in the will.

Q. It was in the draft, but when you come to make your engrossed copy——

A. It was not in the engrossed copy ; instead of being “ the Nesbit family,” it was “ between my cousin and myself ;” and he said he wanted the Nesbit family put 1164 in ; I asked him whether he wanted his father’s name in there as a reason also ; he said : “ No, my father is rich ; I don’t want my father’s name mentioned ;” he says : “ My mother is feeble and incapable of taking care of her property ; she has an income of her own, and then she has the rents and profits of this property here,” mentioning the property where they resided ; “ Mr. Romer, what will the rents and income of that property be worth ? what will it amount to ? ” “ Well, I don’t know, doctor ; ” “ Well, couldn’t it be made to pay \$15,000 ? ” “ Well, I 1165 don’t know ; I should think it might be made to pay \$10,000 ; ” “ Well, that with the income, which she has already, will support her more than comfortably ; it will be more money than she can expend.”

Q. In this connection, I want to ask you whether on the day before——

A. One moment ; in connection with my assuming the responsibility, I said to him : “ Doctor, I am accustomed to act as a professional adviser, and not merely as a clerk, and I have taken the responsibility of leaving out 1166 of your will what I considered unimportant ; ” “ Mr. Romer, it is not your will you are drawing ; you are drawing my will ; ” he said he was not entirely ignorant of law himself.

Q. Was that——

A. Wait one moment ; there was something said in connection with that ; I told him that I had been accustomed to deal with men different from what he was ; that, perhaps, they were not as intelligent, and they did not

1167 insist upon having their way as he did ; that he was the hardest man to get along with that I had ever had anything to do with in the shape of drawing a will ; he smiled and seemed rather pleased at the compliment.

Q. Well, sir, go on—in that connection, before leaving it, in this schedule of the property which he had given you and which you took down at his direction, did you?

A. Yes, sir.

Q. What did he say in regard to the \$20,000 of stock?

A. He said nothing excepting as I wrote it : “ I have 1168 stock,” mentioning the bank, which I have forgotten—“ \$27,000 of stock,” mentioning the bank where it was deposited ; “ \$7,000 of that belong to me, \$20,000 of that belongs to my mother, and this amount must be transferred to her name ;” that is his language.

Q. You have got this schedule, have you, that you took down from him at that time?

A. I have.

Q. Now, sir, go on with that same interview with him on Monday, when you commenced to read this draft of 1169 that will?

A. That was on Wednesday.

Q. When you commenced to read the engrossed copy of the will, and this criticism was made on what you had omitted?

A. Yes, sir.

Q. Well, go on ; what next took place in regard to the Yonkers property?

A. My recollection upon this one point as to date is less certain than as to almost anything else as to whether 1170 the disposition of the property was upon Wednesday afternoon, or upon Thursday morning ; my best impression is, that it was at the interview on Wednesday afternoon that he called that he had his mother's will in his possession ; he told me to write ; I took a pencil from my pocket and wrote that clause precisely, with the exception of inserting a preposition, or something of that kind, as it is in the will here ; when he came to the disposition—final disposition of his property, he said : “ Well, Mr. Romer, I think I will give this to the Town

of Yonkers, what do you think about it?" "Well," says 1171  
 I, "Doctor, I should think the Village of Yonkers was  
 more proper;" "Well, really, now, Mr. Romer, I have  
 been away so much that I don't know the distinction be-  
 tween the town and village—won't you be so kind as to  
 explain it;" says I, "Doctor, the village extends about  
 half a mile above here—the town half a mile farther, or  
 more; the village is bounded on the east by the Saw  
 Mill River, but the town extends over in the neighbor-  
 hood of Bronxville, over that way; and on the south the  
 town runs down to Kings Bridge, and the village stops 1172  
 half a mile below here;" he said that then Riverdale was  
 not in the village; I said no; and he said that it was un-  
 questionably proper then that the property should go to  
 the Village of Yonkers; he says: "What will the Village  
 of Yonkers do with it?" I said: "I don't know; proba-  
 bly, they will appropriate it to some public purpose;"  
 "Well, what?" I told him I really could not tell; "Can  
 they afford to put up a building here commensurate with  
 the property itself?" I replied, "I don't know, they have  
 a village hall;" I believe, I suggested that they might 1173  
 possibly put up a court house, or a literary institution—  
 something of that kind; I have forgotten exactly; and  
 he then dictated in substance, although I, myself, used  
 some of the words given—where he desired that the  
 property should bear his name in full as "in case it  
 should be devoted to public purposes," as mentioned in  
 this clause of the will.

Q. Well, then, sir, did you see him again that day?

A. Whether I had a subsequent interview on that day  
 or upon Thursday morning, I am not certain; I think I 1174  
 did not see him again until Thursday morning.

Q. Well, in the meantime did you have the will that is  
 produced here, engrossed?

A. From the memorandums which I had obtained up  
 to this time this will (the original) was engrossed.

Q. What appointment was made in regard to the ex-  
 ecution of the will?

A. The will was to be executed on the subsequent  
 day.

1175 Q. On Thursday ?

A. On Thursday—on Thursday morning—between 10 and 11 I went to him with this identical paper ; read it to him in full ; asked him whether he would desire that it should be read in the presence of the witnesses, or any of them—he said that he should ; I asked if more than one ; he said that one was sufficient, and named Mr. Radford. My interview was very short at that time ; probably consisted in reading the will at length ; at this time he was satisfied with the engrossed copy ; I then, in  
 1176 the afternoon, before the execution of the will, sought out Mr. Radford ; when we came to the house, Mr. Rose was there, and, I think, Mr. Farrington came before we were admitted into the room. Mr. Radford and myself went to the head of the stairs, and Mr. Higgins had been called upon to attend upon him for something, and we remained at the end of the hall until Higgins had waited upon him. In about five minutes it was announced that he was ready to see us ; we went into the room, and I read to him this will, in the presence of Mr. Radford—Mr. Rad-  
 1177 ford looking over my shoulder at the will, as I read it section by section. I think at this interview he requested me to repeat a sentence again once or twice. I had, in the presence of Mr. Radford, asked him if he desired that Mr. Radford should listen to the reading of the will, and he assented. Mr. Radford asked him if that will was satisfactory ; he said it was ; then the witnesses were called up—Mr. Farrington and Mr. Rose ; they came in and spoke to him ; asked him how he felt ; I think that he remarked that he felt better that day ; I asked him if he  
 1178 desired that these persons should be the witnesses to this will ; that if it was his desire, he should specify it to them ; he then himself asked Mr. Radford, Mr. Farrington and Mr. Rose to be witnesses to his will ; I asked him if this was his will, and that if it was, he should so answer to them ; he announced to them that it was his will and that he wanted them to sign it as witnesses ; he was raised in bed so as to be in a position for writing ; I asked him if he could write—if he was strong enough ; he said he was ; I told him I would like to have him to try

it on a piece of paper so as to see that he had a pen to 1179  
 suit him, and I produced a pen and a piece of paper; I  
 think twice he wrote his name, finally hitting upon Mr.  
 Rose's gold pen as being a pen which he could write with.  
 The will was produced and laid before him and he wrote  
 his name to it, each one of the witnesses looking at him,  
 and I myself then observing him; I think the next thing  
 that was said, Mr. Farrington said, "Dr. Gates, there is  
 sometimes a good deal of trouble about these wills, as to  
 know whether the paper they sign is the same paper and  
 whether it is the will of the testator or not; I want to 1180  
 know whether this is your will?" "Yes," he says, "Mr.  
 Farrington, this is my will." "Do you know the con-  
 tents of it?" and he said "yes," and Mr. Radford replied  
 "yes, it has been read over, section by section, in my  
 presence." He made some remark that he assented to  
 it at least, and after the will was signed, and while I was  
 preparing to seal it, some conversation took place be-  
 tween Mr. Rose and Mr. Radford, in one part of the  
 room, and I ascertained that I had not any sealing wax;  
 he said that he would send for some—the Doctor said he 1181  
 would send for some, and Mr. Rose proposed that he  
 should send down to his house and get some; some one  
 was called, I think the nurse, Higgins, and a messenger  
 was sent down to Mr. Rose's for some sealing wax, and  
 returned in a short time, and then he called for—I think  
 he called for Mr. Hulbert, and said that he wanted some  
 one to send for Dr. Hulbert; Dr. Hulbert came at the  
 door; he told him to go to a particular place in the  
 library and get the seal, bearing an inscription upon it;  
 I have forgotten the inscription; he specified the inscrip- 1182  
 tion upon it; the seal was produced, and the will was  
 sealed up entirely. Remembering that I had forgotten  
 to insert the date, I told him that it would be necessary  
 to break it open again; I broke open the will, inserted  
 the date, put it in another envelope, in his presence and  
 in the presence of the witnesses, directing them specifi-  
 cally to see that it was inserted in the envelope and  
 sealed in their presence, and handed him the will. It  
 was arranged that upon the subsequent day I should

**1183** complete the schedule and insert that with the will in another envelope.

Q. Arranged between whom ?

A. Between the Doctor and myself.

Q. In other words, he requested you to do that, did he ?

A. Whether he requested me to do it then, or whether he had requested me to do it before—I think, before, he had requested me to have the will and the schedule together ; he first directed that the will should be deposited in the Safe Deposit Company of New York ;  
**1184** I told him it would be impossible for the will to be obtained from the Safe Deposit Company by any person excepting those depositing it, and that it would be the source of great embarrassment if the will was deposited there ; he then said that he would give it to the executors and have it deposited by the executor, and the executor could draw it having deposited it in person ; I asked him who would take the will—I asked him which one of the executors—and he said Doctor Hulbert.

Q. On those three days—Tuesday, Wednesday and  
**1185** Thursday—on which you had interviews with him, how much time in all did you spend with him, as nearly as you can come at it ?

A. Well, I should have to reckon it.

Q. On Tuesday how long were you there ?

A. From an hour to an hour and a half.

Q. On Wednesday, the first interview ?

A. About fifteen minutes.

Q. Wednesday, the second interview ?

A. Between an hour and an hour and a half, or two  
**1186** hours ; I cannot tell ; it was a long interview.

Q. Thursday you were with him twice ?

A. On Thursday I was with him twice ; I was with him in the morning, and I was with him again in the evening.

Q. In all that time was there anything in his conduct or his expressions, or anything of a strange or unusual character, exciting the slightest suspicion in your mind as to his competency to execute a will ?

A. There was not ; he asked me if I saw anything

about him that indicated, to my mind, his incapacity for **1187** transacting business ; I told him I did not.

Q. What day was that ?

A. That was at the time that he said it was his will, and not my will—it was in connection with that conversation—on the Thursday morning, as near as I can recollect, when I went to him with the engrossed will ; I think I shall correct my testimony about the length of that interview—it was longer than I have suggested ; on Thursday morning, when I went to him with the engrossed copy of the will, I passed the time of day with him, shook **1188** hands with him, and remarked that his hand seemed moist, and that I thought he was going to get better, and he said that he was very sick ; after the business had been transacted, I spoke about his collection—that I would like to see it ; he said that he would be very happy to have me come up and see it ; I said that I had been very anxious to see it—that I understood it was a fine collection, and that I would be glad to see it ; while I was there, on Thursday, Doctor Arnold came in, and I retired while Doctor Arnold was there. **1189**

Q. During any one of those interviews, was Doctor Hulbert present a moment, excepting the occasion that he was sent for that you have spoken of ?

A. No, sir ; he was not.

Q. What instructions, if any, did he give you in regard to keeping the contents of that will secret from everybody ?

A. Have I mentioned the circumstance of my talking loud.

Q. Yes ; he spoke to you one time and told you that **1190** you talked too loud ?

A. He told me he desired that I should keep the contents of his will entirely secret ; he mentioned, in that connection, that I should not say a thing to Doctor Hulbert about it at all ; I told him that was a professional business that I understood.

Q. Did you indicate to Doctor Hulbert, or any other person, any of the contents of this will, up to the time that the will was executed ?

1191 A. No, sir.

Q. Did Doctor Hulbert ask you any questions in regard to the contents of the will?

A. No, sir.

Q. Do you know whether Doctor Hulbert was at the house—where Doctor Hulbert was on Friday and Saturday and Sunday before the will was executed?

A. I know I did not see him—that is all; I know he was home on Saturday—I know he went home on Saturday.

1192 Q. At White Plains?

A. Yes, sir.

Q. Will you refer to the schedule which he gave you of his property?

A. The schedule as engrossed?

Q. No, sir; the one copied down from his dictation?

[Paper produced.]

Q. Will you read that, and state whether it was taken  
1193 down *verbatim* from him as he dictated it?

Mr. VAN PELT desired to see the paper, and it was handed to him, and he then inquired if it was to be offered in evidence.

Mr. LYON: I do not offer the paper in evidence at all; as an evidence of the soundness of this man's mind. I propose to show by the witness that he gave him a schedule of the property during the time that he was  
1194 taking his instructions for making his will, and that the paper he now reads is, *verbatim*, as it fell from his lips.

[Mr. VAN PELT objected.]

Q. Did he give you a schedule of his property at that time?

A. He did.

Q. What did he give you.

A. He said: "I have bonds in the Safe Deposit Com-

pany of New York—bonds insured by them—and also in 1195 my safe at the Safe Deposit Company's will be found my box containing coupon bonds of 1867 ; I have gold-bearing bonds, the value and date of which can be found out at the Sub-Treasury ; also \$27,000 stock of the American Exchange Bank ; \$7,000 dollars belongs to me, \$20,000 to my mother, and this amount must be transferred to her name ; there will also be found the certificates of Westchester County Bank Stock ; New York State Stock, payable at the Manhattan Company's Bank ; also Croton Water Stock ;" that was the schedule. 1196

Q. He stated that in the order in which you repeat it here ?

A. Yes, sir.

Q. Did he have any other paper before him at the time ?

A. No, sir.

Q. He stated it entirely from his recollection ?

A. He did ; and he told me it was as near as he could recollect ; there is another clause in this paper.

Q. Did he inform you also as to where his mother's 1197 will would be found ?

A. In the Safe Deposit Company of New York City.

Q. That he stated at the time ?

A. Yes, sir ; this clause I refer to ; " I resolve---"

Q. Did he give you any instructions in regard to what he desired as to getting possession of the box ?

A. Let me have the paper ; I can give you the language ; I recollect it distinctly ; after the word Croton . Water Stock, " and whatever there may be I desire that my executors take possession of, which, together with 1198 the whole contents of the box, I desire that my two executors in person verify each for himself and in the presence of the other."

Q. And then he stated where his mother's will was ?

A. He stated his mother's will was in the Safe Deposit Company of New York city.

Q. When you went there on Tuesday, what did you find on a stand near his bed ?

A. I found a small stand by his bed, and there was ice

1199 upon it in a bowl—carbonic acid water in one of those jar fountains ; I think grapes also.

Q. During that period, what use did he make of this ice and carbonic acid water ?

A. He was almost constantly eating ice and drinking this carbonic acid water.

Q. What instructions did he give you, if any, in regard to the mode of getting—

A. He asked me to assist him to the carbonic acid water, and told me to put my thumb on the throttle of  
1200 the valve and gently raise it, and not to use too much because it got warm after it came out of the jar.

Q. To take it out in small quantities ?

A. Yes, sir.

*Cross-examined, by Mr. VAN PELT :*

Q. When was you first called upon in relation to drawing this will ?

A. On Wednesday, August 11th.

Q. By whom ?

1201 A. By a woman, whom I subsequently learned was Mrs. Migy.

Q. Had you had any previous acquaintance with Dr. Gates ?

A. No acquaintance ; I had known him by sight ; I recollect of having challenged him once at the polls on account of his not being a resident.

Q. That was the only conversation ?

A. No, sir ; I think I met him in New York once or twice, but we were not acquainted.

1202 Q. Did he recognize you as the person who had challenged him at the polls when you visited him ?

A. Well, really, he did not refer to that.

Q. How soon did you respond to this call ?

A. Immediately.

Q. What time in the day was it ?

A. About twelve o'clock.

Q. You went up to the Gates' house ?

A. Yes, sir.

Q. Whom did you see there ?

A. I arrived at the house a little before Mrs. Migy, and 1203 she opened the door for me ; I saw while I was there, a servant that I did not know ; I saw Dr. Bolles, whom I did not know ; I saw Dr. Gates.

Q. Did you have an interview with him ?

A. With Dr. Gates.

Q. Yes, sir ?

A. I did.

Q. How long was you there ?

A. About half an hour—less, I think ; less than half an hour. 1204

Q. Were you alone ?

A. Yes, sir.

Q. State what transpired between you during that interview ?

A. Well, as I went in there, I think he said : “ Is this Mr. Romer ? ” I said : “ It is ; ” he told me to close the door and see that no one was near the door—two doors leading into the hall ; I did so, and sat down by his bedside ; “ Mr. Romer, I made a mistake, I thought I was going to die and I sent for you to draw my will ; I feel 1205 better now, and the doctor says that I am better, and I will not call upon you ; ” I told him I was very glad to hear it—that he was not so ill ; I told him that I did not know that he was sick ; I then mentioned to him the fact that I had met him before, and he said that he recollected me ; I said to him : “ Doctor, I supposed that you had made a will ; ” “ I did make a will before I went to Europe, but when I returned from Europe I found that it was necessary for me to alter it ; I want you to send your bill for your services ; ” “ Doctor, I have 1206 not performed any services for you, and should not think of sending in a bill ; ” “ I should prefer that you would send a bill, and would be very happy to have you call upon me socially at any time—would be very glad to entertain you ; ” “ I am very glad you are getting along ; ” some other desultory remarks and I left.

Q. Did he say anything to you about the nature of the will that he wanted to make during that interview ?

A. No, sir.

- 1207 Q. Did he allude to it in any way?  
 A. Did he allude to what in any way.  
 Q. The character of the will that he wanted to make?  
 A. He did not.  
 Q. He gave you no instructions or directions, then, on the subject?  
 A. Not the slightest intimation.  
 Q. And then told you that he would entirely dispense with your services, and requested——  
 A. No, he did not use that language.
- 1208 Q. Well, he wanted you to send a bill, did he?  
 A. He used the language I have given you.  
 Q. That he thought he was going to get well, and had no occasion to make a will?  
 A. "I have made a mistake; I thought I was going to die; I feel better; I don't think I shall require your services"—that is the language.  
 Q. And you left the house then without carrying with you any instructions from him to present yourself again?  
 A. I did.
- 1209 Q. When were you called upon again?  
 A. On Thursday.  
 Q. What day was the eleventh of August?  
 A. The eleventh of August was Wednesday.  
 Q. And you were called again on Thursday?  
 A. Yes, sir.  
 Q. By whom?  
 A. Dr. Hulbert.  
 Q. Where?  
 A. Getty House.
- 1210 Q. At what hour?  
 A. About ten or eleven o'clock.  
 Q. What did Dr. Hulbert say to you?  
 A. He told me that Dr. Gates wanted me to go up and draw his will.  
 Q. Did you go?  
 A. No.  
 Q. Why did not you respond to that invitation?  
 A. I did.  
 Q. How?

A. By going to his physicians.

1211

Q. Who?

A. Drs. Arnold and Bolles.

Q. Did Dr. Hulbert tell you to go there?

A. No, sir, not that I recollect; I believe that I said to him that I should prefer to consult his physicians before I done anything further about the execution of the will, and he acquiesced.

Q. How did you come to say that?

A. Dr. Bolles had told me on Wednesday morning that he thought I had better not have the will made at 1212 that time—that he was not in condition.

Q. Did you see anything strange or peculiar in Carlton's manner when you first called?

A. Not for a man who was as sick as he was.

Q. You thought that he was a very sick man, didn't you?

A. Not as sick as he was.

Q. But you thought that he was very sick even then, when you first called?

A. I believed what he said—that he felt better—that 1213 the Doctor thought he was getting better.

Q. Then how did you come to call on Dr. Bolles?

A. I didn't call on Dr. Bolles, not on Tuesday.

Q. Where did you see him?

A. At the house.

Q. Dr. Gates' house?

A. Dr. Gates' house.

Q. When you went there in pursuance of Mr. Hulbert's request?

A. No, sir; I called there in pursuance of Mrs. Migy's 1214 request.

Q. Did you see Dr. Bolles before you had seen Carlton the first time?

A. No, sir; I saw him at the time I first saw Carlton?

Q. And that was the time he told you that he didn't think Carlton was in a condition to make a will?

A. That was the time that he told me he thought that he had better not make a will then.

Q. You did not mention that in your direct examination?

1215 A. I was not asked it.

Q. What was the precise language, as nearly as you can recollect it, that Mr. Hulbert used when he asked you to go and draw Carlton's will?

A. "Dr. Gates wants you to come up and draw his will."

Q. Nothing more—tell us all that he said?

A. That is all of the precise language that I recollect.

Q. Well, give us the substance of the rest of the communication if you cannot give us the language?

1216 A. Well, I think I said to him that I had been called upon, and that Dr. Bolles had stated to me what I have already stated to you, and that I should prefer to consult with his physicians before I drew his will; that was the whole conversation.

Q. You substantially told Mr. Hulbert, then, that you had learned from the attendant physicians that Dr. Gates was not in a condition to make the will?

A. I told Dr. Hulbert substantially what I have stated.

Q. You told Dr. Hulbert, then, substantially, that the 1217 attendant physician told you that Carlton Gates was not in a condition to make a will, did you?

A. I told him substantially what I have stated; if you want me to repeat it, I will repeat what was said; I don't want you to put language in my mouth.

(Question repeated.)

A. That question I decline to answer except to state what I did say; I told Doctor Hulbert that Doctor Bolles had said on the previous evening that he thought it best that Doctor Gates should not make his will then.

1218 Q. What did Mr. Hulbert reply to that?

A. He did not reply; I went on to state that I thought I should prefer to consult with Doctor Gates' physicians before I did anything further about the will; he acquiesced in that; the precise remark I cannot recollect.

Q. What next transpired?

A. Doctor Hulbert and myself called over to Doctor Arnold's; Doctor Arnold or Doctor Bolles were neither of them in; I returned to the Getty House, my place of residence, and Doctor Hulbert went up the street somewhere; where, I don't know.

Q. Which direction did he go? 1219

A. He went the direction opposite Doctor Gates' house.

Q. The reverse, ha?

A. Yes, sir; at that time.

Q. What next transpired?

A. What next transpired in relation to making this will?

Q. Yes; did you make any appointment with Doctor Hulbert, or have any understanding with reference to your future proceeding? 1220

A. No, sir; I had made up my mind, if you want to know.

Q. No; I don't want to know that at all; I want to know this: whether Mr. Hulbert told you during that interview when you told him that the physician had recommended you not to draw the will then, whether Mr. Hulbert told you that Carlton was capable of making a will at that time?

A. He did not.

Q. He did not tell you that? 1221

A. No, sir.

Q. He simply asked you to come up and draw the will?

A. Yes, sir.

Mr. LYON: He did not ask you to come up?

A. No, sir; he told me that Doctor Gates wanted me to come up and make the will.

Q. (*By* Mr. VAN PELT): What transpired in reference 1222 to the will?

A. On Friday, August 13th, Mrs. Migy called upon me again and told me that Doctor Gates wanted me to come up to make his will; I went up on the Friday night.

Q. What transpired next—whom did you see?

A. I think at this interview I saw Higgins for the first time; the Doctor then was in the north-west room; I might have seen one of the servants; I don't recollect.

Q. Did you see Doctor Gates then in reference to the will, or did you see him at all?

1223 A. I did.

Q. Tell us what transpired ?

A. I went in the room, not intending—if you want me to explain myself—not intending to draw his will.

Q. I just want to know what transpired ?

A. Well, it will be a little better explanation for you to understand me—not intending to make his will, and simply to apologize or pass away the day with him, and pass the matter off ; as I went in he told me to sit down ; do you want to know the entire proceeding of that inter-

1224 view ?

A. Yes ; everything.

A. I sat down by the side of one of those large mahogany bedsteads, and my foot came in contact with the bedstead and he observed it, I did not, and he said : “ Mr. Romer, you will please remove your foot, you will scratch the paint on the bedstead or the varnish ; ” and I removed my foot from the bedstead ; he then told me that he wanted me to make his will, and commenced giving directions about making the will ; I, at this time did not think of making his will or doing anything about it, and sat listening to him, and he gave me several directions in regard to his will, and, finally, I took down some of them upon an envelope which I had in my pocket, in pencil, and left the house ; at that time I recollect distinctly that he wanted me to see that there was no one near the door.

Q. This was the Friday ?

A. I am talking now of Friday.

Q. Give me the day of the month ?

1226 A. Friday, August 13th ; I recollect his giving me directions to see that there was nobody near the door, and to lock the door ; he said to me—I said I thought he was getting better—gave him some encouraging remark, and he said he was very sick ;—he said that his stomach was coated over like his tongue, and he was drinking warm water constantly in order to relieve his stomach so that this coating would drop away, as he expressed it, like a ceiling peels off.

Q. He said he was drinking warm water for that ?

A. He was drinking warm water at the time. 1227

Q. Did he tell you who had prescribed that remedy?

A. No, sir.

Q. He was taking it on his own responsibility, was not he?

A. I don't know.

Q. What else did he say?

A. I said to him, "Doctor, this is a fine place;" he said, "Yes, Mr. Romer; throw open the shutters and see what a splendid view I have;" I did so, and said that the view was magnificent; he said that years ago, before 1228 the shrubbery and trees had grown up so much, we had the entire view of the river, both on this side and on the other side, instead of the narrow strip of water under the Palisades, but the trees and foliage has grown so that you cannot get that extensive view; while I was there he asked me to call Higgins, and I called Higgins and he ordered some ice, he ordered some grapes, and he ordered a milk punch; the grapes and the ice came while I was there, and the milk punch did not; I don't know what the delay was; he was impatient that 1229 Higgins did not respond immediately, and called him again and told him that he wanted him to be more punctual, and was very severe; at that time he spoke to me about the executors, and he said to me at that time that the trust estate, of course, he could not dispose of under his will—that it would be necessary to apply to the Supreme Court for that.

Q. Where is the memorandum that you made at that time on the envelope?

A. I have it. 1230

Q. (*By Mr. LYON*): The memorandum made on Friday?

A. No; the memorandum I made on that Friday I have not got; I have searched for it and cannot find it.

Q. Did you make your memorandum with a view to prepare the will from it?

A. Well, you want the operation of my mind at that time.

Q. Was it your object, in taking that memorandum, to prepare the will in pursuance of the directions he then gave you?

1231 A. I can give you the operation of my mind at the time ; I don't know that I can answer your question, except qualifiedly.

Q. If you took it for any other purpose, you can state it ?

A. That interview was for the express purpose of complying with his request, without making his will ; I took those memoranda because I found that his mind was clear, and I intended, upon these memoranda and others, if his mind became sufficiently clear, to make  
1232 his will.

Q. Then you thought he was all right, did you ?

A. At that time I made up my mind that he was clear in mind, and that if I found subsequently by the additional memoranda, I should take that his mind remained clear ; that I would make his will.

Q. Had you seen his doctor.

A. No, sir ; I had not.

Q. This was a conclusion that you had arrived at ?

A. Myself.

1233 Q. For your own purposes ?

A. Yes, sir ; I did not intend to make his will from this memoranda.

Q. Not from these alone ?

A. No, sir.

Q. What was the nature of this memoranda ?

A. Well, it was the disposition of his property.

Q. Just mention it ?

A. At that time he did not mention Mrs. Darling, I recollect.

1234 Q. He did not intend giving Mrs. Darling anything.

A. I don't know what he intended ; he did not mention it.

Q. What else did he mention ?

A. His servants in the house ; he told me to get their names.

Q. What else ?

A. He mentioned Mrs. Migy.

Q. And who else ?

A. He mentioned the Rev. Dr. Hulbert.

Q. Now, what was he to have? 1235

A. He, as I understood it at that time, was to be residuary legatee of the estate after giving the testamentary bounties to those I have named.

Q. After paying Mrs. Migy and the servants?

A. Yes, sir.

Q. Did he mention Dr. Wood at that time?

A. Yes, sir.

Q. And Mr. Hulbert was to have everything that was left?

A. That is what I understood. 1236

Q. And nothing was then said about the village of Yonkers?

A. Nothing was then said about the village of Yonkers.

Q. Where was Mr. Hulbert at the time of that interview.

A. Friday night.

Q. Yes?

A. I think Dr. Hulbert, on Friday night, when I went the—no, that was on Friday morning—I think Dr. Hulbert was just starting for White Plains; I met him in 1237 the library.

Q. He was in the house when you were there at that interview?

A. Yes, sir.

Q. Did he remain until you left?

A. No, sir; he went away just as I came in.

Q. When did you see him again?

A. Dr. Hulbert's?

Q. Yes?

A. On Saturday. 1238

Q. Where?

A. At his house.

Q. Where?

A. White Plains.

Q. What did you say to him then?

A. I said to him that I had been called home to attend a death in my own family; that I should necessarily be absent until the subsequent Tuesday, and that I had made arrangements to have Mr. Mitchell—Robert J.

1239 Mitchell—to attend to the business of drawing Dr. Gates' will, in case it should be necessary before I could return.

Q. Was that all that you said to him?

A. That I thought that Dr. Gates' mind was clear myself, and that I thought that Dr. Bolles and Dr. Arnold meant that Dr. Gates should not make a will, from a remark that Dr. Bolles had made to me on the Saturday before I left, in the presence of Dr. Arnold, in regard to the making of Dr. Gates' will.

Q. What was that remark?

1240 A. Before I went—would you like the substance of the interview?

Q. No, I want the remark in this connection?

A. Well, the remark was: "It is not so sure that the old people won't get the property after all;" that was one remark; "It is doubtful whether he will make a disposition of his property after all;" that was the remark.

Q. That was the remark from Dr. Bolles which made you think—

A. I thought that Dr. Bolles and Dr. Arnold meant to  
1241 prevent Dr. Gates from making a will, so that the old people should get the property.

Q. And the object of making the will was to prevent them getting it?

A. The object of making the will was to carry out the design of the testator.

Q. What else did you say to Dr. Hulbert on this occasion?

A. I said to him: "I have left those directions—I have left the directions with Mr. Mitchell, and if it is  
1242 necessary that the will should be made before I return, I would like you to call upon Mr. Mitchell and have those carried out."

Q. Did you tell Mr. Hulbert the nature of this remark made by Dr. Bolles?

A. Yes, I did.

Q. What did he say to that?

A. I think he acquiesced with me; I don't remember his language.

Q. Acquiesced with you in what way?

A. In the belief that they were endeavoring to prevent Dr. Gates from making a will. 1243

Q. So that the property could go to the parents?

A. Well, yes; that was my idea.

Q. What did Mr. Hulbert say further to you?

A. He said he would attend to my injunction.

Q. And you got Mr. Mitchell to attend?

A. Yes, sir.

Q. Where did Mr. Mitchell reside?

A. He resides at Yonkers; he is practising law in the city of New York and Yonkers—Robert J. Mitchell it is. 1244

Q. Had you spoken to Mr. Mitchell?

A. I had written to Mr. Mitchell.

Q. Whom did you give the note to take to him?

A. I think I mailed it.

Q. Where from?

A. Yonkers; before I went away on Saturday.

Q. Then, what else did Mr. Hulbert say on that occasion?

A. I don't recollect of anything else.

Q. Did he say something else that you don't remember? 1245

A. If I don't recollect it, I cannot tell you.

Q. Do you think he said something you do not remember, or do you think that you have told us all that he did say?

A. I think I have told you the substance of the interview.

Q. Now, when did you see him again?

A. On Tuesday night following.

Q. Did you see him on Sunday? 1246

A. Oh, no; I was home on Sunday, at Pleasantville.

Q. That is the Sunday before Carlton died?

A. That is the Sunday before Carlton died.

Q. The next time you saw him was—

A. On Tuesday night.

Q. Where?

A. I saw Dr. Hulbert crossing the street to the jewelry store, and I went over and saw him.

Q. In Yonkers?

- 1247 A. Yes, sir.  
 Q. Had you seen Carlton Gates in the interval?  
 A. No, sir.  
 Q. And had you taken no steps to draw the will?  
 A. No, sir ; excepting as I have stated.  
 Q. What transpired between you and Dr. Hulbert?  
 A. I told him to go to Dr. Gates and announce that I was in town, and ask him when he wanted to see me.  
 Q. What had he said to you before that?  
 A. He had telegraphed me in response to a telegram  
 1248 from me.  
 Q. What was it?  
 A. I telegraphed " Must I come to-day ; I should very much prefer to remain away."  
 Q. What was the reply?  
 A. Come this evening.  
 Q. Where was you ?  
 A. At Sing Sing.  
 Q. You were on your return from your mother's funeral, were not you?  
 1249 A. No, sir ; I went to Sing Sing that day with my father.  
 Q. When was your mother's funeral?  
 A. On Monday.  
 Q. The day before ?  
 A. The day before.  
 Q. And you went to Sing Sing with your father on Tuesday ?  
 A. Yes, sir.  
 Q. And you telegraphed from there to Dr. Hulbert, at  
 1250 what place ?  
 A. At Yonkers.  
 Q. Was that all you telegraphed to him ?  
 A. All.  
 Q. How soon did you get a response ?  
 A. In about an hour or an hour and a half—I think it was longer than that.  
 Q. Did you go to Yonkers that night ?  
 A. I did.  
 Q. Where did you go first ?

A. Well, I have stated I saw him at the jewelry store. 1251

Q. You met him as you entered the village on his summons?

A. No; I went across to the Getty House, and I saw Dr. Hulbert pass across to Van Starch & Thomas' jewelry store, and I followed him across.

Q. You had come to Yonkers upon his summons?

A. Yes, sir; I had come upon the summons of Dr. Gates, I supposed; I had come in response to the telegram.

Q. In response to the telegraph from Mr. Hulbert you went to Yonkers, and saw him, as you have stated? 1252

A. Yes, sir.

Q. What did you say to Dr. Hulbert?

A. "Announce to Dr. Gates that I have arrived in town and ask him when he wishes to see me"?

Q. What did he say?

A. He said he would.

Q. Was that all that was said between you?

A. Yes, sir.

Q. How soon did you see him again? 1253

A. It was not half an hour before Dr. Hulbert came to the Getty House, and said to me "the Doctor desires to see you immediately;" Dr. Hulbert went one way; I went directly up to Dr. Gates.

Q. Which way did Dr. Hulbert go?

A. Well, now, I don't know; he did not go with me—that is all I know.

Q. Did you see him there that night?

A. No, sir; I did not; he was not there, to my knowledge, that night. 1254

Q. When you went up there whom did you find?

A. I found Higgins sitting at the head of the stairs; I think Mrs. Migy let me into the house.

Q. Did you go directly up to Dr. Gates' room?

A. Yes, sir.

Q. That is the Tuesday?

A. The 17th—Tuesday night; yes, sir.

Q. You had not seen any of these Doctors down to that time, had you?

1255 A. I saw Dr. Arnold once in the drug store ; that was as long back as Wednesday or Thursday, the 11th or 12th ; and I saw Dr. Arnold or Dr. Bolles on Saturday night, and I had not seen the doctors after that.

Q. Did they tell you that Saturday night that he was in a condition to make a will ?

A. No, sir ; I don't think they told me that ; they told me that they would see ; I asked them to see that the Doctor did not call in anybody and have his will made, unless he was in a condition to do so, until I returned to  
1256 persuade him to put it off, and they told me they would do so.

Q. And you did not see them again until after you went there on Tuesday night ?

A. No, I did not.

Q. Was it on Tuesday night that you took the memorandum you have in your hand ?

A. No, sir ; I took this from the memorandum ; they were nothing but heads ; there was no memorandum of any kind.

1257 Q. When did you make this memorandum ?

A. I don't know ; I wrote it a short time ago ; I had the scraps of memorandums which I made this from.

Q. When did you see Mr. Hulbert again ?

A. After this Tuesday night.

Q. Yes, sir ?

A. Let me think a moment—you mean after I saw him down at the jewelry store.

Q. No, I mean after you went up to Dr. Gates ; you say you went up to Dr. Gates, then, in pursuance of his  
1258 message from Dr. Gates—now, when did you see him after that time ?

A. I am not sure whether I saw him that night or the next morning ; I cannot tell ; I don't recollect.

Q. What is your best recollection—did you not see him that night after your interview with Dr. Gates in the library, and smoke a cigar with him ?

A. No, it was not that night I smoked a cigar with him.

Q. Where did you see him after that interview ?

A. I think if I saw him again it was at the Getty 1259 House.

Q. He came down to the Getty House, then?

A. I understood he came from Mr. Bashford's; he did not go to the house with me, and I don't think he went to the house after that.

Q. After that interview you saw him at the Getty house?

A. That is my best impression now.

Q. How long an interview did you have with him?

A. A very few minutes. 1260

Q. What was the substance of it?

A. I don't know now whether he asked me about Dr. Gates condition—I don't recollect.

Q. Don't you remember anything that was said between you?

A. I don't remember now; I cannot tell you that there was an interview on that night.

Q. Well, was the subject of the interview the Gates' will, or anything in reference to it?

A. If I had an interview with him upon that night it 1261 was upon that subject.

Q. When did you see him again?

A. I guess I saw him Wednesday.

Q. What time in the day?

A. I think I saw Doctor Hulbert in the library on Wednesday.

Q. What time in the day?

A. I think I did about ten or eleven o'clock.

Q. How long did you see him?

A. A very short time. 1262

Q. What was the subject in your interview?

A. The subject was Dr. Gates' condition—that was the subject of the interview.

Q. The will—was that alluded to?

A. I presume the subject was mentioned; I mentioned the subject to him.

Q. What did he say?

A. I cannot recollect.

Q. What did you say?

1263 A. I said I thought the Doctor's mind was very clear

Q. What did Mr. Hulbert say ?

A. Mr. Hulbert said that he thought his mind was very clear.

Q. When did you see him again ?

A. I cannot recollect of having another interview with Dr. Hulbert until—I think it was Wednesday night.

Q. Where was that ?

A. That was out in the hall leading to my room.

Q. Leading to your room where ?

1264 A. In the Getty House.

Q. To your private room—your bedroom ?

A. Yes, sir—my library.

Q. What time was it ?

A. It was along about seven or eight o'clock in the evening, or eight or nine—I don't know that it was later than that.

Q. Was you in your room ?

A. Yes, sir.

Q. Did Mr. Hulbert come to your room ?

1265 A. He came to my room at my request.

Q. What was the subject of that interview ?

A. I did not know the names of the servants, and Dr. Gates said I could get the names of the servants, or I told the Doctor that I could get the names of the servants, and I asked Mr. Hulbert to get the names of the servants and bring them to me ; he did so.

Q. The servants whom Dr. Gates wanted to leave legacies to ?

A. Yes, sir.

1266 Q. Had Dr. Gates told you to give legacies to them ?

A. Yes, sir ; he told me all in the house.

Q. Did he mention the name of any servant ?

A. No, sir.

Q. Did he mention all ?

A. All in his employ he said.

Q. Did he give you the names ?

A. No, sir ; he said I could get them.

Q. Did you ask him for the names ?

A. Yes, sir.

Q. Why did not he give them to you? 1267

A. I don't know.

Q. What reason did he assign?

A. I think he said that he did not recollect the names of them all.

Q. How soon after that did Mr. Hulbert come with the names?

A. The time he came I say was Wednesday night.

Q. How soon after Dr. Gates told you he did not know the names of the servants did Mr. Hulbert bring the names of the servants to you? 1268

A. I think it was Tuesday night that Dr. Hulbert—that Dr. Gates told me to get the names, and I think it was Wednesday night I got the names.

Q. Were the names written out?

A. They were.

Q. When Mr. Hulbert gave them to you?

A. They were.

Q. Did he give them to you in writing?

A. He did.

Q. Where is the memorandum? 1269

A. I have it, I believe, somewhere.

[The witness produced the memorandum].

Mr. Van Pelt offered the memorandum in evidence, and it was marked "Contestant's Exhibit No. 1, of November 19, 1869, J. B. S."

Q. This is the memorandum that was handed you by Mr. Hulbert, then, is it? 1270

A. Yes, sir.

Q. Do you know in whose handwriting it is?

A. I do not.

Q. It is what was used by you in completing the will?

A. If you will let me see—I don't know whether it compares or not, but I think it does.

[The witness here compared the memorandum with the will with the exception of Higgins' name].

1271 Q. Higgins you left out?

A. Yes, sir.

Q. The original draft that you had, have you got that at hand—the first engrossed copy I should say?

A. The copy that was in evidence—yes, sir.

Q. No—it is the rejected engrossed copy and the first one.

A. There has been no other one produced excepting that.

Q. Yes; there was one at Yonkers?

1272 A. That is the one.

Q. Oh, no, this is the will—I see the name of Higgins is stricken out of this; how did that come?

A. I think the Doctor—my impression is the Doctor told me he did not recollect that man's name—I think that was it—the way it was—and I ran a pencil through it.

Q. Peter Harvey Higgins?

A. Yes, sir.

Q. And you struck it out?

1273 A. Yes, sir.

Q. When did anything further transpire about the will—you are now down to Wednesday night?

A. Thursday morning is the time I went there again.

Q. Whom did you see there then?

A. I did not see anybody but Higgins and Doctor Gates on Thursday.

Q. Did you see Mr. Hulbert, at all, on Thursday?

A. Yes, I did; he came to the door when he was called by Doctor Gates at the time of the execution of

1274 the will.

Q. What became of the will after it was executed?

A. It was sealed.

Q. To whom was it given—who took possession of it?

A. Doctor Gates.

Q. And you left the house leaving the will there in his possession?

A. Yes, sir.

Q. When and where did you see it again?

A. The next time that I saw that will was when I read it to the family.

Q. Whom did you receive it from for the purpose of 1275  
reading it?

A. From Dr. Hulbert?

Q. Where were you when he gave it to you?

A. In the house.

Q. And he gave it to you for the purpose of reading  
before the family?

A. Yes, sir.

Q. When did you see Doctor Hulbert again, after the  
will was executed?

A. Let me think about that; I think—let us see— 1276  
Thursday—I did not see Dr. Hulbert again until after  
Carlton Gates was dead.

Q. Did you have any discussion or conversation with  
Mr. Hulbert in reference to any of the provisions in this  
will before the will was executed?

A. No.

Q. Nothing whatever?

A. No, sir; I steadily avoided it.

Q. Did he undertake to talk with you about it?

A. Not excepting, I think, to answer my inquiries. 1277

Q. Well, what inquiries did you make?

A. Well, I made—I think I have stated the substance  
of them; when I gave directions to him I knew he was  
the executor in the will, and I gave directions as to  
where he should go to have the will drawn in case of my  
absence, and I asked him to get the names of the parties.

Q. In reference to the provisions of the will?

A. That is the single provision of the will; I asked him  
to get the names of the servants.

Q. That you have mentioned to us? 1278

A. I don't know of anything else that I talked to him  
about.

Q. Did he tell you anything about the domestic affairs  
of this family?

A. Yes, sir.

Q. During the pendency of this will?

A. Yes, sir; he said that Doctor Gates had been  
obliged to leave the family—to have the old lady kept  
from the house.

1279 Q. Why?

A. Well, that it was injuring him very much.

Q. Did he tell you that he had directed her not to come there, and that he was installed as master of the household?

A. He told me that she had left the house; I cannot recollect whether he said under his direction, or whether he said under the direction of the Doctor, and that he was stopping there at Doctor Gates' particular and specific request.

1280 Q. What did Carlton tell you on the subject of the party indicated, or to be indicated by him in the poisoning clause?

A. Not one word.

Q. He never mentioned to you the person he thought had poisoned him.

A. All he ever said on the subject of poisoning I wrote down, word for word, in that will; he never mentioned a name, and never discussed the question, or told me who it was, nor did I dream who it was, and I was quite sur-

1281 prised to learn that it was not in the family.

Q. That was the schedule that you made, you said?

A. I believe Mr. Lyon has it—the engrossed schedule.

Q. That was a memorandum that you took from his lips at the time he wanted you to make this will?

A. Yes, sir.

Q. Did he ever furnish you with any schedule?

A. He furnished me with the information.

Q. I know; but did he ever furnish you with any written direction?

1282 A. No, sir.

Q. Did he ever direct you to prepare a schedule to have it annexed to the will?

A. Yes, sir.

Q. What was the character of that schedule?

A. I have given it.

Q. Did you ever propose the schedule?

A. I did.

Q. Is it annexed to the will?

A. No, sir.

- Q. Was it annexed to the will when it was executed ? 1283
- A. No, sir.
- Q. Where is it ?
- A. In the possession of Mr. Lyon, I think.
- Q. Is it referred to in the will ?
- A. No, sir.
- Q. But you prepared it to annex to the will ?
- A. I prepared it to be enclosed in the same envelope to point out the property.
- Q. Was it enclosed in the same envelope ?
- A. No, sir. 1284
- Q. Did Carlton Gates ever see it ?
- A. Yes, sir.
- Q. When ?
- A. He saw it ; he did not see the engrossed copy ; he saw the copy that I had taken.
- Q. He did not see the engrossed copy—was it in any manner attested ?
- A. No, sir.
- Q. Did the subscribing witnesses see it ?
- A. I don't know that they did ; I should think not. 1285
- Q. And that directed—what was his direction ?
- A. I will give it to you again if you want it ; do you mean to ask what was directed to be done about it, or what it was ?
- Q. In reference to the \$20,000 worth of stock ?
- A. That was as I have stated a thousand times before ; he said he had \$27,000 of the stock of the American Exchange Bank ; “\$7,000 belongs to me, the \$20,000 to my mother, and this amount must be transferred to her name ;” that is the language. 1286
- Q. And that was not transferred in his lifetime ?
- A. I don't know, sir.
- Q. And there was no other paper executed by him in reference to its disposition after his death ?
- A. I don't know, sir.
- Q. Do you know of any ?
- A. I have not had any executed.
- Q. Nothing but the will ?
- A. No, sir.

1287 Q. Was that paper shown to Mr. Hulbert before the will was made—that schedule?

A. No, sir.

Q. In reference to the devise to the Village of Yonkers, when did that subject first come up?

A. I have stated in my direct-examination that it was either upon Thursday morning or Wednesday afternoon; it is my impression that it was Wednesday afternoon before he died.

Q. Did you have any talk with Mr. Hulbert about 1288 that?

A. Never a word.

Q. Before?

A. No, sir; when it came to me it came like a flash; he dictated to me until he came down to the very end of the clause; then he says: "I think I will give that to the Town of Yonkers."

Q. You were the counsel of the Village of Yonkers then?

A. Let me see whether I was or not; I was elected 1289 counsel to the village on Friday, August 13th, I think.

Q. That is about the time you were appointed counsel to the Village of Yonkers?

A. It was nearly that time; yes, sir.

Q. And you suggested the Village of Yonkers as the devisee instead of the Town of Yonkers?

A. I did, most assuredly.

Q. You have represented the Village of Yonkers here as counsel, have you?

A. I have appeared; yes, sir.

1290 Q. Have you had any authority to do so?

A. Well, that is a question that I cannot answer without telling you what steps have been taken; that is all; I don't know whether I have the right.

Q. Have not you had an express direction from the Village of Yonkers not to appear?

A. No, sir.

Q. Have not you had a communication from him that you were not authorized to appear?

A. Whom do you mean by him.

Q. From the President of the Village of Yonkers? 1291

A. I had a communication from him which said that there had been a sort of consultation, and that they had concluded not to appear.

Q. Not to have counsel appear for them?

A. Yes; but I wish to state that there was also a consultation with the majority of the Board, and they authorized me to appear.

Q. Where is the letter of the President?

A. That is home.

Q. What is the purport of that communication? 1292

A. I thought it was a private communication.

Q. Well, it is public now?

A. It was signed by the President of the village; he said: "We have had a talk among ourselves—that is about the language—and we rather agreed not to appear," as I understood from him, because——

Q. Did he tell you that no bill would be paid for appearing?

A. No, sir; I did not ask him, or he did not tell me that; oh, no, nothing was said about that. 1293

Q. And you still appear for the village?

A. Yes, I still appear, I suppose; I don't know anything different; it was only a question, as I understand it, as to what the rights of the village were between Mr. Knox and myself.

Q. Did you ever discuss with Mr. Hulbert as to this devise to the Village of Yonkers?

A. No, sir.

Q. Where did you get this word "testate," that is used here? 1294

A. From Dr. Gates—that is Dr. Gates' word.

Q. Did Doctor Gates tell you to prepare that devise to the Village of Yonkers just in the form in which it appears in the will?

A. Precisely in the language, excepting where the last clause is: that I desire—"that if and in case the same shall be used for any literary, collegiate or scientific institution, or institution of a kindred nature, I desire that such institution shall bear my name in full;" I

1295 dictated some of the language in that, but that is all; the rest of the language is his.

Q. Did he propose that his full name should be used?

A. He said that he didn't want the name of Gates—he wanted the name in full—that is where he himself dictated; I put in the words “literary, collegiate or scientific institution, or institution of a kindred nature,” after he had asked me for what purpose I thought it would be used.

Q. Did you prepare another paper to be used after  
1296 this?

A. Yes, sir.

Q. When was that prepared?

A. I think that was prepared on Thursday night—either on Thursday night or Friday morning.

Q. What was the nature of that paper?

A. That was a limitation.

Q. Have you got that?

A. I have, somewhere, I think.

1297 [The paper was produced.]

Q. This was prepared after the other will was executed?

A. Yes, sir.

Q. Did he direct this to be prepared at the time the will was executed?

A. No, sir; it was in an interview after that.

Q. How soon after?

A. I think it was within an hour after that.

1298 Q. After the will was executed?

A. Yes, sir.

Q. And this was to be a limitation of the use of the property devised to the Village of Yonkers?

A. It was to be as it reads.

Q. Why was not that executed?

A. Because Doctor Gates died before we got ready to have it executed.

Q. Before you could get it executed?

A. Before I could get the witnesses together and have it executed.

Q. You went up there to have it executed ? 1299

A. No, sir ; I started to go up there, and I met Mr. Rose on Saturday afternoon, about four o'clock, and he told me that it was too late—that Carlton Gates was dead.

Q. But you had commenced getting it ready, and was getting it ready with a view of having it executed with dispatch ?

A. I am free to express that I did not make much dispatch in getting that paper, for I didn't think there was any fear of his dying, and I rather delayed it than 1300 otherwise.

Q. So that this was actually prepared on the day the other will was executed ?

A. That is my belief ; yes, sir.

Q. Was it ever submitted to Carlton Gates ?

A. No, sir.

Q. When you started to have it executed, where was the will ?

A. I don't know—oh, yes—no, I don't know.

Q. You did not have the will ? 1301

A. No ; I don't know where it was.

Mr. LYON stated that the paper which the witness had produced as the limitation which he had proposed, subsequent to the execution of the will, was not completed.

The witness said that he would try and find the completed one.

WM. ROMER.

On motion, adjourned until Friday, December the third, at ten o'clock.

JOHN W. MILLS,  
*Surrogate.*

1302 December 3d, 1869.—The parties met pursuant to adjournment.

Present—The SURROGATE.

Mr. LYON and Mr. PRIME for Proponents.

Mr. VAN PELT and Mr. NORRIS for Contestants.

CORNELIA PALMER, being sworn by the SURROGATE in support of said will, and examined by Mr. LYON, testified as follows :

- 1303 Q. Where are you living now in New York ?  
 A. At the Home of the Friendless, 32 East Thirtieth Street.  
 Q. Did you know Doctor Carlton Gates in his lifetime ?  
 A. Yes, sir.  
 Q. Were you at any time acting in the capacity of housekeeper for Doctor Gates at his house in Yonkers ?  
 A. I was.  
 Q. When did that commence ?  
 1304 A. On the nineteenth of April.  
 Q. April last ?  
 A. Yes, sir.  
 Q. And you remained there ?  
 A. Until the twenty-second of June.  
 Q. And during all that interval you acted as housekeeper for Doctor Gates ?  
 A. I did.  
 Q. Was he at home during that period ?  
 A. Yes, sir.  
 1305 Q. When you went there he was just recovering from a sickness, was he ?  
 A. Yes, sir.  
 Q. When you went there who composed his household—who was living in the house with him at that time ?  
 A. His aunt and cousin and one servant—one servant only.  
 Q. Mrs. Nesbit and Miss Nesbit ?  
 A. Yes, sir.  
 Q. Where was Mrs. Gates at that time ?

- A. In the city. 1306
- Q. How long after that time did Mrs. Gates come to the house?
- A. I think in two weeks, as near as I can recollect.
- Q. There was one servant, you say, in that establishment?
- A. Yes, sir.
- Q. She was acting as cook?
- A. Yes, sir.
- Q. How long did she remain after Mrs. Gates, the mother, came to the house? 1307
- A. Well, I think somewhere about ten days.
- Q. Then she left?
- A. Then she left.
- Q. What cause did she assign for her leaving?
- A. She found it disagreeable, and did not wish to stay on Mrs. Gates' account.
- Q. Did you try to induce her to remain?
- A. I did, but she would not remain as long as Mrs. Gates did.
- Q. Was it stated to Dr. Gates? 1308
- A. It was.
- Q. Did he make any effort to induce her to remain?
- A. He did.
- Q. How many servants, during that period of time, did you engage?
- A. I engaged four.
- Q. You secured them from intelligence offices in New York?
- A. I did.
- Q. How long did they remain? 1309
- A. One of them remained two nights; the other, one; and I retained two one month.
- Q. Why did they leave?
- A. On account of Mrs. Gates; on account of her not being agreeable to them.
- Q. Did you try to induce them to stay?
- A. I did.
- Q. And they refused to do so?
- A. They refused to do so.

1310 Q. What was the interference on the part of Mrs. Gates which they found fault with?

A. They said she interfered as regards their food; they did not get enough to eat.

Q. And the four finally all left?

A. Yes, sir.

Q. Was this the subject of conversation between yourself and Dr. Gates at any time—the effort to keep servants?

A. It was.

1311 Q. What did he say on that subject?

A. He wished me to try and make the best effort I could to retain them.

Q. How long after you went there yourself, did you find it to your comfort, at least, to leave there?

A. In about two weeks.

Q. And why did you consent to remain as long as you did?

A. At the solicitation of Dr. Gates.

1312 Q. What was it, Miss Palmer, that made it uncomfortable for you to remain there?

A. Mrs. Gates made it very uncomfortable for me.

Q. State any of the conversations you had with the Doctor, on the subject of your leaving—the reasons you gave why you could not get on?

A. I told him that his mother interfered so much and so constantly, that it was impossible for me to keep servants, and that I could not remain there unless I could keep servants.

Q. What reply would he make to that?

1313 A. He would wish me to try and make an effort to keep them, and he did not wish his mother to interfere in any of the domestic matters.

Q. Did he speak of that as having for a long time interfered with his comfort?

A. He did.

Q. Did he say, however, that when she left home, that he was uncomfortable while she was away, because he was afraid that something might happen to her?

A. I never heard him make that remark; that he would be left alone without any one to do for him.

Q. Did he ever refer to the discomfort he had, fearing 1314 that something might happen to her while she was away?

A. He frequently spoke about that while she was away from home, and felt anxious about her; he did not like to have her away, fearing that something might happen to her.

Q. Did he ever say that he did not know how to account for her conduct at times?

A. He did; frequently he spoke of it.

Q. You left finally, you say, in the early part of June? 1315

A. Yes, sir; on the 22d of June.

Q. In consequence of what?

A. Of Mrs. Gates.

Q. Now, then, during all that time the Doctor was at home?

A. During all that time, except occasionally he would go to New York for the day.

Q. I mean to say that he did not make any visits away from home?

A. No, sir.

1316

Q. Was there anything in his conduct or deportment, or in his remarks to you, that indicated anything strange or unnatural in his condition of mind?

A. No, sir, not in the least.

Q. In the remarks which he made to you about his mother was there anything that was not to be accounted for by the conduct of his mother, in regard to the servants and the household?

A. No, sir, not in the least.

Q. Was your suspicion, at any time, excited by any- 1317 thing he said or done, that he was not frequently regular and right in his mind?

A. No, sir; never, at any time; I never thought of it.

Q. How many servants did you leave in the house when you left?

A. Not any, excepting a man servant.

Q. At the time you left?

A. The servants left with me at the same time.

Q. They would not remain after you left?

- 1318 A. No, sir, they would not remain.  
 Q. Did he bring you over to White Plains?  
 A. He did.  
 Q. What man was this that was at the place at that time—was it an Irishman?  
 A. It was an Irish boy.

*Cross-examined by Mr. VAN PELT:*

- Q. When did I understand you to say that you first went there?  
 1319 A. The 19th of April.  
 Q. And when did you leave?  
 A. The 22d of June.  
 Q. Was you there continuously during that time?  
 A. I was.  
 Q. Who hired you?  
 A. Mr. Gates.  
 Q. Who first called upon you in reference to the hiring?  
 A. Mrs. Gates.  
 1320 Q. Where at?  
 A. At my sister's here in White Plains.  
 Q. Did she tell you that you must not let Carlton know that she had hired you?  
 A. She did.  
 Q. What reason did she give you for keeping that fact from him?  
 A. That he was ill and nervous.  
 Q. What further reason, if any?  
 A. Not any.  
 1321 Q. How would the fact of his being ill and nervous account for her requesting you not to let him know that she had hired you?  
 A. I don't know, sir; that is best known to herself.  
 Q. Did she not tell you that he was in that peculiar state of mind towards her that she could do nothing that would be agreeable to him?  
 A. No, sir, she did not.  
 Q. Did you not think that a strange fact in the case, that she wished him not to know that she had hired you,

or that she had been instrumental in getting you to go 1322 there?

A. I thought it strange, of course, at the time, but after I heard it explained I did not.

Q. Who explained it to you?

A. Dr. Hulbert.

Q. How did he explain it to you?

A. That he was sick and nervous, and that Mrs. Gates was away from home, and that I was to go to him and make what arrangements I had to make.

Q. Through Mr. Hulbert? 1323

A. Through Mr. Hulbert; I was not to make the engagement through Mr. Hulbert, but Mr. Hulbert told me I was to engage with Mr. Gates; Mrs. Gates did not tell me that I was to go directly to Mr. Gates, herself, but Mr. Hulbert told me that I was to be the housekeeper of Mr. Gates.

Q. Did Mr. Hulbert tell you that he would introduce you to Dr. Gates as a suitable person for housekeeper?

A. He gave me a letter of introduction to him.

Q. Where is that letter? 1324

A. I don't know; I gave it to Dr. Gates.

Q. It purported to introduce you to Dr. Gates on the recommendation of Mr. Hulbert?

A. Yes, sir.

Q. And the idea was that you would be more acceptable to Dr. Gates because you were recommended by Dr. Hulbert, than you would be if you were introduced by Mrs. Gates?

A. No, sir.

(Question repeated). 1325

A. I took it that he would suppose that Dr. Hulbert was acquainted with me, and his mother was not.

Q. It was based on the fact or supposition that Mr. Hulbert stood better and had more influence with Dr. Gates than his mother?

A. No, sir, not all; nothing of the kind.

Q. What was the motive, then, in getting the letter from Mr. Hulbert?

A. I don't know, sir, what her motive was; it is best

1326 known to herself what her motive was; she wished me to go to Dr. Hulbert's herself.

Q. Was it not the fact, Miss Palmer, that you, and Mrs. Gates, and Dr. Hulbert, acted on the presumption that you would be more acceptable to Carlton Gates, if recommended by Mr. Hulbert, than you would be if recommended by Mrs. Gates?

A. I had no such supposition as that because I knew nothing about Mrs. Gates.

Q. No, all three of you?

1327 Mr. LYON: What does she know about the other's suppositions.

Q. I want to get at the reason why you were introduced to Dr. Gates by Mr. Hulbert instead of Mrs. Gates?

A. Because Mrs. Gates was a stranger to me and Dr. Hulbert had known me previously, and I believe it is customary for persons to take letters of introduction from persons with whom they are acquainted to persons they are not acquainted with.

1328 Q. If Mrs. Gates was satisfied to hire you?

A. She did not; I did not hire with her at all; she merely spoke to me, and left me to go to Dr. Gates and make the arrangement.

Q. Why did you not go to Dr. Gates?

A. I did.

Q. Why did you go to Mr. Hulbert first?

A. She went to Dr. Hulbert, herself, and came back and requested me to go to him.

Q. Did you go to Dr. Gates before you went to Mr. 1329 Hulbert?

A. No, sir.

Q. How came you to go to Mr. Hulbert?

A. Because Mrs. Gates requested me to.

Q. For what purpose?

A. That he should give me what information I required; she said that he could tell me more than she could—more of what Dr. Gates wished or required.

Q. Did you tell Carlton at any time that you had been recommended to him by his mother?

A. I did not.

1330

Q. Why did you not?

A. Because she wished me not to do so herself.

Q. What reason did she give?

A. Because he was sick and nervous, and she thought perhaps it would be better for her not to say anything about it; that he would feel anxious if he knew she had come up in the cars, and she did not wish him to know it.

Q. Then, it was out of tender regard to his mother, that she would not expose herself; that you were not to be recommended in her name?

A. No, not in her name.

Q. It was because of his kindness and affection towards his mother, was it?

A. I took it so.

Q. Did you ever learn that it was because he had a suspicion against his mother, that he had an antipathy against her, and would receive no person in the house that was brought there or recommended by her?

A. I never did.

1332

Q. You never discovered that?

A. No, I never did.

Q. What peculiarities did Mr. Hulbert state to you as existing in Carlton's case?

A. I did not see Dr. Hulbert myself at all.

Q. Before you went there?

A. I did not; my sister called on him.

Q. And received the letter of introduction?

A. And received the letter of introduction.

Q. Did Mrs. Gates agree with you as to your wages when she saw you?

A. They were spoken of.

Q. What was the amount spoken of?

A. \$250 a year.

Q. Was you hired for a year.

A. I was not; I was merely hired.

Q. Were you hired for any definite time?

A. Not for any definite time.

Q. Did you ever speak with Mr. Hulbert on the subject of your wages?

- 1334 A. I never did.  
 Q. How much did you receive for your wages?  
 A. I received \$25 a month—\$50 for the two months.  
 Q. That was at the rate of \$300 a year?  
 A. Yes, sir.  
 Q. Who paid you that?  
 A. Mr. Gates.  
 Q. Carlton Gates?  
 A. Yes, sir.  
 Q. Did you tell him that you had agreed with his  
 1335 mother for \$250?  
 A. I did not.  
 Q. Why did you not tell him that fact?  
 A. I agreed with him for that, sir.  
 Q. You agreed with him at the rate of \$250 a year?  
 A. Yes, sir.  
 Q. I thought you said that you agreed with the mother  
 for \$250 a year?  
 A. I did, and I agreed with him for the same, sir;  
 what was over that he volunteered to give me; he thought  
 1336 I had been very much annoyed and very much tried since  
 I had been there, and he gave it to me.  
 Q. You told him you had been?  
 A. No, sir, I did not tell him; he knew that I had  
 been.  
 Q. He did it of his own accord?  
 A. Yes, sir.  
 Q. You never, at any time, told him that you had made  
 the agreement with his mother first for \$250 a year?  
 A. I did not.  
 1337 Q. Had Carlton recovered from his sickness when you  
 went there?  
 A. Not entirely.  
 Q. Was his mother in the house at that time—when  
 you first went there?  
 A. No, sir.  
 Q. Where was she?  
 A. In the city, I presume.  
 Q. When did you first see her there?  
 A. In about two weeks, I think it was, after I went  
 there.

- Q. Had she not been there during the interval? 1338  
 A. I did not see her during that time.  
 Q. Then, when she came there, did she remain?  
 A. She did.  
 Q. Continuously?  
 A. Yes, sir.  
 Q. Until you left?  
 A. She may have been in the city a day or two; I don't recollect about that; but she was there during the time I remained.  
 Q. What was you hired for? 1339  
 A. As housekeeper.  
 Q. What did you do?  
 A. I attended to the household affairs.  
 Q. Did you have the superintendence of the whole house?  
 A. Yes, sir; so far as it was in my power to do so.  
 Q. How long did Carlton remain at home after you went there?  
 A. He was there during the time I was there.  
 Q. The whole time? 1340  
 A. The whole time, excepting that he might go to the city in the morning, and he would be back again in the afternoon.  
 Q. Did you ever see him under the influence of liquor?  
 A. Never, but once.  
 Q. When was that?  
 A. I could not fix the time; he came from the city one afternoon—I think he was somewhat under the influence of liquor; that is the only time. 1341  
 Q. Were you and Carlton and Mrs. Gates in the habit of taking your meals together?  
 A. Yes, sir.  
 Q. What was Carlton's treatment towards his mother?  
 A. I never saw anything but kind treatment.  
 Q. What was his language towards her?  
 A. Well, at times, when he would be angry, it was like every one's language that is angry.  
 Q. Give us the language?

1342 A. I could not ; I could not give you the language ; I never took any note of it, or any notice of it.

Q. What was the character of it ?

A. It was the character of language of most any person who is angry.

Q. Was it profane ?

A. At times I have heard him use profane language.

Q. Towards his mother ?

A. Yes, sir.

Q. Was it abusive ?

1343 A. No, sir, not very abusive ; I never heard him.

Q. What was the subject of his complaint ?

A. Well, there were various complaints ; it was mostly on account of her interference with domestic affairs—disarranging his comforts.

Q. In what way ?

A. Well, in many ways.

Q. Give us the ways ?

A. One was, he went to the city one day, and she moved his room—moved his furniture and things out of  
1344 his room, without his knowledge or consent—and he came home and found himself in a room without any carpet, and in great disorder.

Q. What did she do that for ?

A. I do not know.

Q. Was it to clean the room ?

A. No, sir ; she thought that he ought to be moved—that the room was too small.

Q. Oh, removing him into another room ?

A. Yes, sir.

1345 Q. What room had he occupied ?

A. A hall bedroom.

Q. How large was it ?

A. Not very large.

Q. How large ?

A. I do not know how large.

Q. Could you not indicate its size to us ?

A. No, sir.

Q. You cannot ?

A. It was the size of a hall bedroom.

- Q. Was it more than eight feet square? 1346
- A. I could not tell you.
- Q. Do you know how much eight feet is?
- A. I presume it is eight feet.
- Q. Eight feet square was it not?
- A. I cannot say whether it was or not.
- Q. As nearly as you can say, was it not eight feet square?
- A. I do not know.
- Q. How large was it in comparison with this room?
- A. It was small in comparison with this room? 1347
- Q. Not one-quarter of the size, was it?
- A. Yes, sir.
- Q. Well, how much larger?
- A. I could not tell you.
- Q. What room did she move his furniture into?
- A. A room opposite his library.
- Q. How large was that?
- A. Well, it was a large-sized room.
- Q. About as large as this room, was it not?
- A. No, sir. 1348
- Q. Well, pretty near?
- A. Nearly as large, possibly.
- Q. It was the most desirable and comfortable room?
- A. That was for him to say.
- Q. I ask you which was the most desirable and comfortable room?
- A. Perhaps, if the large room was arranged and in order, it would have been the most comfortable room.
- Q. Was not the object of moving this furniture into this room to make it comfortable? 1349
- A. There was no furniture in it excepting the bed.
- Q. Was not the necessary furniture put into it?
- A. No, sir; there was not the necessary furniture put in it; there was a bare floor.
- Q. Was not the carpet put down?
- A. Not at any time while I was there?
- Q. Did she not assign as a reason for transferring him to that room, that it would be more comfortable and agreeable to him?

1350 A. She thought it would be more comfortable and agreeable, but she did not say that it would be to him.

Q. Do you not know that that was the room he afterwards occupied?

A. I do not.

Q. Do you not know that that was the room he occupied during his last sickness?

Q. I understood that he occupied a north room during his last sickness.

Q. What else did she do to interfere with his comfort?

1351 A. She had his library cleaned, and it was all ready to put the carpet down, and she came in and forbid putting the carpet down, consequently when he came home the room was in disorder, when it need not have been in disorder.

Q. What was the object of having the carpet taken up?

A. To have the room cleaned?

Q. Who did that?

A. Myself and one servant.

1352 Q. Under whose direction?

A. My direction.

Q. Why did she not wish the carpet put down?

A. I cannot say what her reason was?

Q. Did she forbid its being put down at all, or did she only say that it should not be put down that night?

A. She forbid its being put down that night; I don't know whether she intended that it should not go down or not.

Q. When did it go down?

1353 A. The next day.

Q. What did she do besides to interfere with his comfort?

A. I could not mention all; she did numerous things.

Q. I want you to mention what they were—I want you to state every single thing she did?

A. She generally did things for his discomfort?

Q. I do not want you to state that she generally did things—I want you to specify the things she did—the particular things?

A. I could not particularize, because I never kept 1354 them in my mind.

Q. I ask you to mention anything she did to interfere with his comfort and the arrangement of his household?

A. Well, she interfered very much with his servants. it was impossible for him to keep servants.

Q. What did she do to the servants?

A. I could not tell you; she would go down stairs, and there was always a trouble and disagreement in some way or another.

Q. Did you hear what transpired between her and the 1355 servants?

A. No, sir; I did not.

Q. You did not know then that she made any trouble?

A. I only knew by the rumpus they would make, and their talk.

Q. You did not hear anything that transpired between them and her?

A. Yes, sir, I did at times; not always, of course.

Q. Well, tell us what you heard at times?

A. She would go and take things off the table while 1356 they were eating.

Q. Did you see that?

A. No, sir; they would come and tell me it was done.

Q. I am asking you what you saw done and what you heard—did you ever see her take things off the table?

A. No, sir; it was only brought to me that she had done it.

Q. I asked you what you saw her do yourself; I want to know what you saw and heard transpire between Mrs. Gates and the servants? 1357

A. I heard a great many things—I could not particularize them.

Q. Can you not tell us one thing more?

A. I know there was a difficulty one day relative to the fire; she accused them of not turning the fire out, and they positively said that they did turn it out, and she told them they lied—that there was no use of saying that; of course those things created a great deal of trouble.

- 1358 Q. Did she use the word "lie?"  
 A. She did.  
 Q. You heard it?  
 A. I did.  
 Q. What did the servants say?  
 A. She said that she had turned the fire out.  
 Q. Where was that fire?  
 A. In the kitchen.  
 Q. At what time?  
 A. At night.
- 1359 Q. She said that they had not put the fire out at night?  
 A. That they had not turned it out.  
 Q. Turned it on or off?  
 A. Turned it out.  
 Q. You mean to put it out before going to bed?  
 A. Yes, sir.  
 Q. Do you know the fact, whether they had turned it out or not, yourself?  
 A. I found the fire turned out—I presume they did it themselves; I found it out.
- 1360 Q. Don't you know that she did it herself?  
 A. I don't know who did it; I found it out.  
 Q. What else did you see or hear between her and the servants?  
 A. I do not know that I could state, for I never kept those things in my mind, or have I thought of them since.  
 Q. Are you able to mention one other fact?  
 A. I do not think I could particularize one; I know there was generally a great deal of trouble.
- 1361 Q. I do not ask you for what there was generally; I ask for particular instances of interference on her part with the servants?  
 A. Perhaps if I had known that I was to be questioned about it, I might have borne them in mind.  
 Q. As it is, they are not in your mind?  
 A. No, sir.  
 Q. Did you ever have any difficulty with Mrs. Gates?  
 A. No, sir; because I would not.

Q. During the whole time you were there, you had no 1362  
personal difficulty with her ?

A. No, sir.

Q. Did she ever treat you in an improper manner ?

A. She made herself very disagreeable to me the most  
of the time I was there.

Q. In what ways ?

A. In various ways.

Q. Mention the ways ?

A. I could not mention the ways ; in upsetting every  
plan I had in housekeeping matters ; if I proposed to do 1363  
one thing, she would propose to do another ; and would  
keep things constantly in a state of confusion.

Q. Did you yield to her, or did she yield to you ?

A. Sometimes she would yield to me, and sometimes I  
would yield to her.

Q. And you went on together in that way ?

A. Well, the best we could.

Q. What else did she do that was unpleasant to you

A. She often, at times, said many things that were very  
insulting. 1364

Q. What did she say ?

A. I could not particularize them.

Q. Mention one thing ?

A. I could not particularize them ; I know that many  
times I felt very much insulted by Mrs. Gates.

Q. Can you not give us one instance ?

A. No, sir, not one.

Q. Just reflect for a moment, and see if you cannot ?

A. I just know what my own feelings were at the time  
while I was there. 1365

Q. I want to know what she said to you ?

A. I could not particularize them to you.

Q. Not one thing ?

A. No, sir ; not one thing.

Q. What else did she say or do to render it unpleasant  
to you there ?

A. I could not tell you ; things were generally un-  
pleasant.

Q. I do not want you to answer generally ; I want the  
special instances ?

- 1366 A. I could not particularize.  
 Q. Can you not, after reflecting for a moment?  
 A. No, sir.  
 Q. During the time you were there, did you see Mr. Hulbert?  
 A. No, sir.  
 Q. Not during all the time you were there?  
 A. No, sir.  
 Q. Did you see him afterwards?  
 A. Once at the Home.
- 1367 Q. Whereabouts?  
 A. At the Home of the Friendless, in New York.  
 Q. When was that?  
 A. I could not tell you exactly the time; it was, perhaps, a month ago.  
 Q. After Carlton's death?  
 A. Yes, sir.  
 Q. He called upon you there where you were engaged?  
 A. He did.  
 Q. For what purpose?
- 1368 A. To get me to go as housekeeper for some gentleman in Yonkers.  
 Q. Did he speak to you of the Gates' matter?  
 A. He spoke of it.  
 Q. Of the Gates' will?  
 A. I do not know that he spoke of the will; he spoke of Dr. Gates.  
 Q. Did he tell you that the will was being contested?  
 A. No, sir.  
 Q. Is that the only interview you have had with him
- 1369 since?  
 A. Yes, sir.  
 Q. Did he tell you that he would want you for a witness?  
 A. No, sir.  
 Q. Did you ever see Carlton use any violence towards his mother?  
 A. No, sir, never.  
 Q. Did you ever hear him order her to leave the table while she was taking her meals?

- A. No, sir. 1370
- Q. What was Mrs. Gates conduct and treatment towards Carlton?
- A. Well, she was usually very annoying to him, as I have stated to you.
- Q. How was she annoying to him?
- A. In not doing as he wished her to do.
- Q. In what respects?
- A. In letting domestic matters alone, and not interfering with them; he did not wish her to.
- Q. What did she say to him? 1371
- A. I could not tell you what she said to him; I have not laid up those conversations.
- Q. What was her conduct and treatment towards Carlton, himself.
- A. Well, as I have said, annoying to him in those particulars.
- Q. Well, leaving those out, what was her treatment towards him?
- A. I never saw anything but what was well enough.
- Q. Kind, affectionate and motherly, was it not? 1372
- A. No, sir.
- Q. How was it?
- A. I should not consider it affectionate or motherly when she did everything to annoy him.
- Q. That is going into generalities again; I want you to specify a single thing she did to him, personally, that was calculated to annoy him?
- A. Why, in upsetting his domestic matters.
- Q. Leaving domestic matters out of view, what did she do to annoy him? 1373
- A. I never saw her lay hands on him or do anything of that kind.
- Q. Did you ever hear her use harsh language towards him?
- A. No, sir.
- Q. Did she not manifest the utmost affection and regard for him?
- A. No, sir; I think not.
- Q. In what instances did she fail to do so?

1374 A. In not making him comfortable as regards his household matters.

Q. You now mean the interference with the servants?

A. Yes, sir; her interference with the servants made it very uncomfortable.

Q. During the time that you were there what did you see on her part that was wanting in affection and kindness towards her son?

A. Of course I considered all those things wanting in affection and kindness.

1375 Q. Leaving those out, tell us what you saw otherwise?

A. I never saw anything, as I have stated; I never saw her lay hands on him or anything of the kind.

Q. Why do you insist in saying that she was not kind and affectionate to him, personally, then?

A. I should think it was not very kind in constantly annoying a person and making him uncomfortable and disagreeable; I cannot see where the kind treatment is in that.

1376 Q. You had the idea that Mrs. Gates was annoying him by interfering with the household?

A. Yes, sir, I know she was.

Q. Now, leaving that out of the case, what else is there that you saw that leads you to believe that she desired to annoy him?

A. Nothing else; I supposed that was sufficient, sir.

Q. Who waited upon the table at the meals?

A. The servant, when they had one.

Q. Who sat at the head of the table?

1377 A. Mrs. Gates.

Q. Did she ever fail to make it pleasant and agreeable for Carlton at the table?

A. Not that I know of.

Q. Or yourself?

A. Yes, sir.

Q. What did she do to make it disagreeable to you?

A. She found fault with a great many things, and said a great many things that were very disagreeable.

Q. At the table?

- A. At the table. 1378
- Q. What did she say ?
- A. I cannot particularize them ; I wish you would not ask me.
- Q. Mention one thing she said ?
- A. I cannot, sir.
- Q. Your feeling towards Mrs. Gates is not very kindly, is it ?
- A. I have no disagreeable feeling towards Mrs. Gates at all, sir.
- Q. You feel that she insulted you ? 1379
- A. I do so ; she insulted me at times, sir.
- Q. Did you insist in having your way in the management of the household with her ?
- A. I did not.
- Q. Was she your superior or was you her superior in that household ?
- A. I think we were—there was no assuming to be superiors about it.
- Q. Were you under her control or directions, or was she under yours ? 1380
- A. I was not under hers, or was she under mine.
- Q. You received no orders or suggestions from her as to household matters ?
- A. I often spoke to her about things myself.
- Q. Did you merely consult with her to see what her views were, or did you consult with her to act in accordance with her wishes ?
- A. I tried to do so, sir.
- Q. How many servants were there during this time ?
- A. There were five, I think, during the time I was there. 1381
- Q. Who hired them ?
- A. Mr. Gates ; at least I engaged them.
- Q. You engaged them ?
- A. I engaged four of them ?
- Q. Where did you engage them ?
- A. I engaged them in the city.
- Q. At whose request ?
- A. At my own request.

- 1382 Q. Did you consult Mrs. Gates ?  
 A. I did not.  
 Q. Why did you not ?  
 A. I had no occasion to do it, and I was told not to do it.  
 Q. Who told you not to do it ?  
 A. Mr. Gates ; I was there as housekeeper, and when the servants left he expected me to get others.  
 Q. Why did he tell you not to consult with Mrs. Gates ?  
 1383 A. Because he wished me to take the matter in my own hands, and to manage things myself as I thought proper.  
 Q. Then he had more confidence in you than he had in his mother—is that it ?  
 A. He thought that his mother was an old lady and was incapable.  
 Q. Didn't he think that his mother was insane ?  
 A. No, sir ; at times he did.  
 Q. Did he not ever say so ?  
 1384 A. He said that at times he thought so, and then again at times he thought she was not.  
 Q. Was he not in the habit of saying that she was insane, and that he would put her in the insane asylum ?  
 A. I never heard him say that he would put her there ?  
 Q. But you have heard him say that he thought she was insane ?  
 A. Yes, sir, I have.  
 Q. What other reason did he give you for wishing you to hire the servants, besides the one that his mother was  
 1385 old and incapable ?  
 A. Because, I suppose, it is customary for the housekeeper's to hire the servants.  
 Q. In order to have them under their own control ?  
 A. Yes, sir.  
 Q. So that the servants that you hired were to be under your control, and not under the control of Mrs. Gates ?  
 A. Yes, sir.  
 Q. She was to be entirely overlooked and ignored ?

A. No, sir ; he wished her to be treated with the greatest respect, and to have the servants attend to her personal wants, but he did not wish her to interfere in the domestic affairs. 1386

Q. And he directed you to pay no regard to her orders ?

A. I have said nothing of the kind.

Q. In household matters ?

A. Yes, sir.

Q. Did you not think it strange that Carlton should make such orders in the house of his mother ? 1387

Mr. LYON : She has not said that he made any such orders.

Q. I understood you to say that Carlton told you not to obey his mother's orders in regard to household affairs ?

A. No, sir ; I said that he wished to have the servants attend to all her personal wants in every way, but that he did not wish her to interfere in domestic matters. 1388

Q. And in domestic matters the servants were to be under your control ?

A. Yes, sir.

Q. Didn't you think it strange that Carlton should entirely set aside his mother in her own house, and put the servants under the charge of a stranger ?

A. No, sir ; I believe it is customary for housekeeper's to take charge of the servants.

Q. You say that Mrs. Gates is old and feeble, do you ?

A. I think she is. 1389

Q. Do you think she was incapable of conducting a household ?

A. I don't say anything about it ?

Q. I ask you whether, in your judgment, she was incapable of conducting a household ?

A. I think she was.

Q. In what respect ?

A. In respect to her being old and feeble.

Q. Was she so old and feeble that she could not go about the house ?

1390 A. No, sir.

Q. Could not she go about as well as you?

A. I suppose she might.

Q. Then what else was failing or lacking on her part, if she could go about as well as you could?

A. Because I was there to attend to those matters, and it was not her place to attend to them.

Q. What have you ever seen in Mrs. Gates to indicate that she was not capable in body and mind of superintending her household?

1391 A. I do not know, sir, that I have seen anything.

*Re-direct examination by Mr. LYON :*

Q. In speaking about her not being capable of managing a household, have you, in your mind, what you saw of her management of servants—do you mean that in that regard, she was incapable from what you saw of her management of servants in the household?

A. Yes, sir.

1392 Q. You stated in the cross-examination, that you heard Carlton Gates say at times that his mother was insane; I want to know whether it was not put in this form; that he could not explain her conduct at times in any other way except by the fact that she was out of her mind?

A. That is the way he used to speak of it.

Q. That he could not account for her conduct at times in any other way than by thinking that she was insane?

A. Yes, sir.

1393 *Re-cross examination by Mr. VAN PELT :*

Q. Was not Carlton in the habit of helping you at the table before his mother?

A. No, sir.

Q. Do you not know that that was one of her complaints?

A. I do not know anything about them.

Q. Did not that occur in the presence of Mrs. Darling on one occasion—did she not complain?

A. I do not know, sir; I have never thought of it.

Q. Do you not know that Carlton was constantly in 1394  
the habit of showing attention and courtesy to you before  
he attended to his own mother?

A. No, sir; not more than was proper for a gentleman  
to show to a person.

Q. But he did show you attentions before his mother?

A. No, sir.

Q. He did not?

A. No, sir; not that I am aware of.

Q. Did he not ever help you at the table before he  
helped his mother? 1395

A. He may have done it at times.

Q. Was it not habitual with him?

A. No, sir.

Q. Did he not do it many times in the presence of  
Mrs. Darling?

A. No, sir; I never noticed it.

Q. Do you not know that it was one of the complaints  
that she made against him?

A. No, sir; I never heard of it before.

Q. Did you not have Carlton's respect and confidence 1396  
to a greater extent than his mother?

A. No, sir.

Q. Did you not tell Mrs. Darling that Mrs. Gates was  
a woman who had two faces?

A. No, sir; I did not.

Q. Did not you and Mrs. Darling have some conver-  
sation about Carlton showing you attentions before his  
mother?

A. No, sir; I never had any such conversation with  
Mrs. Darling. 1397

Q. In what light did you regard Mrs. Gates in the  
house?

A. As Mr. Gates' mother.

A. As a boarder?

A. No, sir.

Q. What then?

A. I supposed she was living in the house as she  
always had formerly.

Q. Did you regard her as a servant?

- 1398 A. No, sir.  
 Q. What did you regard her as?  
 A. As Mrs. Gates, the mother of Dr. Gates.  
 Q. But you regarded him as the head of the household?  
 A. I did.  
 Q. And directed all your course and conduct accordingly?  
 A. I did, sir.  
 Q. During this time that you were there, did you ever  
 1399 hear Carlton say he thought he had been poisoned?  
 A. No, sir.  
 Q. By any one?  
 A. No, sir.  
 Q. You never heard anything about that?  
 A. No, sir.  
 Q. Did Mrs. Gates ever go to your room at night while you were staying there, and ask you to allow her to stay there all night?  
 A. She did, sir.  
 1400 Q. What reason did she give to you for making that request?  
 A. I cannot say, sir; she said that she felt nervous, and did not like to go to her own room.  
 Q. Did she not tell you, that she was afraid of Carlton?  
 A. No, sir.  
 Q. Was not that the reason that she requested you to allow her to stay in your room?  
 A. No, sir; she did not tell me that.  
 1401 Q. Are you quite clear that she did not, or do not you recollect whether she did or not?  
 A. Yes, sir; I am quite clear that she did not tell me that.  
 Q. That she was afraid of Carlton, and wanted to stay with you?  
 A. No, sir; she did not.  
 Q. When did she make that request of you?  
 A. The night before I left.  
 Q. And you never, during all this time, heard or saw

any indication of violence on the part of Carlton towards 1402  
his mother?

A. No, sir.

(Signed) CORNELIA PALMER.

WILLIAM ROMER resumed the stand, and his cross-examination was proceeded with by Mr. VAN PELT:

Q. Will you please refer to the schedule that you have 1403  
mentioned before?

[The witness produces a paper.]

Q. Read the portion of it in reference to the \$20,000 of stock that Carlton designated as belonging to his mother?

A. "Also \$27,000 of stock of the American Exchange Bank, \$7,000 belongs to me; the \$20,000 to my mother, and this amount must be transferred to her name;" that is the end of the sentence. 1404

Q. "And this amount must be transferred to her name," are the words that are there?

A. That is the end of the sentence.

Q. And that is all on that subject?

A. In relation to the transfer—in relation to that particular stock it is, excepting as to where it could be found.

Q. When did you make that memorandum, and where?

A. This memorandum was made upon Wednesday; the schedule was completed upon Thursday. 1405

Q. The day that the will was made?

A. Yes, sir.

Q. Is that all the direction that you received from him in reference to the transfer of the \$20,000?

A. It is.

Q. Where did you write that memorandum?

A. In his room.

Q. You took that memorandum for the purpose of drawing the will?

1406 A. I took it for the purpose of assisting my memory in drawing the schedule.

Q. Why did you not insert that direction to transfer the \$20,000 of stock in the will?

A. Because I thought it formed a part of the schedule, and not a part of the will.

Q. Would the schedule form a part of the will unless the schedule was referred to in the will?

A. Not excepting as directory, directing the executors where the property was and what it was.

1407 Q. Would it be a valid direction in your judgment as a counsellor at law?

A. I have not been retained for the purpose of answering those questions.

[Question objected to; objection overruled; exception.]

A. A valid direction; yes.

Q. A schedule unsigned by the testator and unwitting, not referred to in the will, for his executors to transfer \$20,000 of stock to another party purporting to be otherwise disposed of by the will?

A. Whether that would be a valid direction to the executors?

Q. Yes, sir.

A. To carry out the provisions of the will?

Q. No, sir; you do not understand the question.

(Question repeated.)

A. If I understand you it would not legally transfer this stock.

1409 Q. That is what I want to get at—I will ask you why you did not put this in the will, or in such a shape as to legally transfer the stock?

A. The question did not occur to me.

Q. Then, in that respect the will of the testator has not been carried out?

A. It was not given to me as his will—it was given to me as a part of the schedule.

Q. What schedule?

A. Of the property which he owned.

Q. Was that schedule in any way referred to in the 1410 will?

A. It was not.

Q. Suppose anything should happen to you by which that schedule should not be forthcoming, what evidence would there be that it was his direction before the will was made that this stock should be transferred?

A. If all the evidence which has been made public was lost, I do not see that there would be any left.

Q. It is not contained in the will, nor in any contemporaneous documents signed by the testator? 1411

A. It is not contained in the will; it is contained in the schedule; it is contained in a memoranda from which the schedule was taken, and I believe it was communicated to the executor, Dr. Hulbert.

Q. Where is the schedule that you refer to?

A. Mr. Lyon has it.

Mr. LYON: The one which was here on the first day do you mean?

1412

Mr. VAN PELT: I mean the final engrossed draft.

*Witness:* I think it is in the engrossed draft of the schedule.

[The paper was produced and handed by the witness to Mr. Van Pelt].

Q. The paper that you now hand me is the schedule referred to by you? 1413

A. Yes, sir.

[The paper was offered in evidence, and marked contestant's Exhibit "A" of December 3, 1869].

Q. When was the schedule prepared?

A. On Friday succeeding the Thursday of the execution of the will.

Q. It was after the execution of the will?

1414 A. It was—that is, engrossed.

Q. Why was it not executed?

A. Because Carlton died before the witnesses could be obtained to attest the codicil and the schedule which were all to be sealed in an envelope together.

Q. Will you please produce the codicil you prepared for execution; the first one which you handed me was incomplete, and it could not have been the one you referred to.

1415 [The witness handed Mr. Van Pelt a paper; Mr. Van Pelt read the codicil in evidence, and it was marked contestant's Exhibit "B" of December 3, 1869].

Q. I understand you to say that he gave you this direction in regard to the transfer of this \$2,000 of stock before the will was executed on the day that you made the memorandum?

A. I have read to you his language with reference to that money.

1416 Q. Well, on what day was that prepared?

A. That was, I think, on Wednesday.

Q. Previous to his death on Thursday?

A. That was, I think, on the Wednesday, previous to his death.

Q. Now, why did you not put that in the will itself, and have it all executed at the same time instead of deferring it until after the will was executed?

A. Did you understand me to have answered that question.

1417 Q. No, sir?

A. Because it did not occur to me at the time.

Q. It was an omission, then, of your own?

A. It was an omission of my own if it was an omission at all.

Q. Do you regard leaving \$20,000 entirely out of consideration an omission?

A. I suppose that if that schedule had been properly executed, as it was intended to be executed, that there would be no doubt about the transfer of the property by the executor according to his direction.

Q. Was it your intention to have the schedule executed 1418 after?

A. It was.

Q. And not inserted in the will?

A. Not inserted in the will, but put in an envelope with it, and to be attested.

Q. Now, what was your object in doing the business that way, instead of putting it in the will; if you thought of it before, and intended to have the schedule prepared afterwards to be executed, what was your object in putting it in that shape rather than putting it in the will 1419 itself?

A. My object was to get the will executed; there had been so much delay that I wanted to get the will executed, and then I intended to do up the rest of the business so far as the schedule was concerned, and have matters finally arranged.

Q. You thought it of paramount importance to have the will executed?

A. I thought it of paramount importance that the testator should make his will if he desired to do it. 1420

Q. To whom, or in whose interest was it of paramount importance to have the will executed at that time?

A. It was to the interest undoubtedly, pecuniarily, of the legatees and devisees.

Q. Was it not as much to the interest of his mother to have this provision for her security included as it was these other provisions for the benefit of the other legatees attended to for their interest?

A. It was to the interest of his mother to have all the property that was to go to her. 1421

Q. But I understand you to say that you thought other considerations were so pressing and so important that they must be attended to first, and that you could attend to the matter of the mother afterwards?

A. The question of this particular \$2,700 never occurred to me in relation to its transfer so far as the carrying out of the devise of the testator was concerned—under the direction of the testator—never occurred to me that it would be necessary to put it into the will at all at the time.

1422 Q. Did you, during the time that this will was in preparation, and before its execution, examine the records or examine any papers in reference to the character of Carlton's estate in the homestead?

A. No, sir.

Q. Did you receive any information from any person on that subject?

A. Excepting from Carlton himself.

Q. He showed you no deeds?

A. He did not.

1423 Q. Do you know whether Mr. Mitchell, in pursuance of your letter that you have referred to before, called on Dr. Gates to make his will?

A. Well, I have no positive knowledge, but I am quite certain that he never called upon him.

Q. You are certain that he never went there?

A. Yes, sir; I am as certain as I am of any ordinary thing, I know; I never knew anything about his calling there; I never heard of it.

Q. Did you receive more than one telegram from Mr.

1424 Hulbert?

A. No.

Q. Did you ever see Carlton Gates' will?

A. No; what will.

Q. Carlton Gates' will, referred to in the schedule?

A. His former will.

Q. Yes?

A. The will he made before he went to Europe.

Q. Yes?

A. Never.

1425 Q. Did you ever see a copy of it?

A. No.

Q. Do you know what became of it?

A. No; I think he told me it was destroyed; I think he informed me that it had been destroyed.

Q. Who did he tell you had destroyed it?

A. He did not tell me.

Q. Did he tell you when it was destroyed?

A. No, I am not certain that he told me that, but he said that he found it necessary to make another will; I recollect that.

Q. Did Mr. Hulbert ever tell you it had been destroyed? 1426

A. No.

Q. I understood you to say, that in your judgment Carlton was not in a condition to make a will the first week; is that so?

A. I never saw Carlton Gates when he did not talk to me as intelligently as you ever talked to me, or any person I meet in ordinary conversation, but his physical condition was such; he was so weak and exhausted, that I thought it was better to defer the making of his will 1427 until he became stronger and was better able to undergo business transactions.

Q. Then, so far as you could judge, he was capable of making a will the first week?

A. I never saw him the first week, except for about from five to fifteen minutes—yes, I did—the first week I saw him on Wednesday—the first interview—and then on Friday; Friday evening I saw him, and on Friday morning I saw him.

Q. Did you ever talk with him about his mother? 1428

A. No, sir.

Q. Did he ever express any hostility towards his mother in your presence?

A. No; all that he said about his mother, was almost the precise language used that I have before testified to, that is in the will, except that he made the remark that she was weak and feeble, and that she was incapable of taking care of the property, and that she had an ample amount herself.

Q. If you had been aware that Carlton, during all the 1429 time that this will was pending, was under the delusion that he had been poisoned; that he believed his mother was insane, and that he had a violent antipathy against his mother for imaginary causes, would you have considered that he was in a condition to make a will?

A. If it was a delusion upon those points, and they were not facts, of course I would not consider that he was in a condition to make a will.

Q. Do you know whether he had that delusion or not?

1430 A. He never expressed himself to me in such a way that I supposed he had any delusion, except in relation to his having been poisoned, and upon that he talked as sensible as anybody that I ever heard converse.

Q. If the subjects that I have mentioned before, were not alluded to by him further than you have stated, you would have no means of knowing whether he entertained those delusions or not, would you?

A. Well, I think in reference to his mother, that I have explained that; that he spoke of her; that he told me 1431 why he did not give his property to his mother, and told me how he regarded it; he expressed no antipathy against her.

Q. If he had expressed antipathy to you with regard to his mother, and you had known that he had no cause for it, no real cause for it, would you have considered that he was under a delusion that would affect his mind?

A. If he had a violent hatred against any person, and there were no reasonable grounds for his having a hatred, and it was continuous, I would suppose that he was labor- 1432 ing under a mistake and probably a delusion.

Q. If you had known that Carlton was in the habit of choking his mother, tearing the clothes off her person, squeezing her face so as to force out a tooth, pouring pitchers of cold water upon her, threatening to shoot her, kicking her, accusing her of having poisoned him, refusing to eat things that were sent him by her, lest they should contain poison, charging her with being insane and driving her off the premises, how would you account for the existence of those features?

A. Well, I might account for it on the ground that he was drunk; that would be one way to account for it; I have seen people act precisely in that way when they were drunk.

Q. Supposing he was sober?

A. I have seen persons act just as inconsistently when they were laboring under an intense fever and their brains delirious.

Q. Suppose he had no fever, but was able to be about the house?

A. If there was no foundation for it all, then I should 1484  
consider it was a delusion.

Q. You would not then have considered him in a con-  
dition to make a will?

A. No.

Q. And you would not have made the will?

A. No, sir.

Q. Did you attend the funeral of young Shannon?

A. No, sir.

Q. You was not in Yonkers, then?

A. No, sir.

1485

Q. That was on the Sunday after the death of Carlton?

A. I think it was Sunday or Monday.

Q. Whenever it was, did you attend it?

A. No, sir; I did not—I was not there.

Q. You was not there at all?

A. No.

Q. Did you ever see Mrs. Gates' will or the copy of  
it?

A. I saw the copy of it.

Q. Before you made this will?

1486

A. Yes, sir.

Q. Where did you see it?

A. I read it—I had it in my hand—I had it from  
Carlton.

Q. Did he give it to you?

A. Yes, sir.

Q. You said it was a certified copy?

A. Well, I ain't sure about that—it was a copy—I  
think it was a duplicate original now.

Q. A duplicate original?

1487

A. Yes, sir; it strikes me it was a duplicate original—  
I ain't sure about that—I did not examine it with refer-  
ence to that.

Q. I asked you at the last hearing, in reference to your  
authority for appearing for the Village of Yonkers; you  
said that you had received a letter from Mr. Knox, I will  
now ask you whether there has been any action of the  
Board of Trustees in regard to that?

A. There has, and I intend to act upon the resolution.

1438 Q. Won't you do so now?

A. I prefer to do so after I have withdrawn from the stand as a witness.

Q. What is the resolution?

A. The resolution I have here.

Q. Please read it?

A. (The witness reading): "Office of the Village Clerk, Manor Hall, Yonkers, New York, November 24, 1869, WILLIAM ROMER, Esq., Corporation Counsel of the Village of Yonkers, Dear Sir: At a meeting of the Board of Trustees held on Monday evening the 22d instant, the following resolution was adopted: *Resolved*, That this Board does not consider it necessary that the Village of Yonkers be represented by counsel in the matter of the last will and testament of Carlton Gates, deceased, now pending before the Surrogate of this County, and that the counsel to this Board be, and he is hereby requested to have any appearance which has been entered therein for the village withdrawn without delay, and any proceedings therein on their behalf discontinued. Very respectfully, J. G. P. Holden, Clerk." Upon that, of course, I withdraw any appearance I have made for the Village of Yonkers, as counsel; I would state further that my appearance was occasioned by a consultation with the majority of the Board.

Q. Not in an organized Board?

A. No, sir; but that was the reason I appeared; I only wanted to discharge my duty—nothing else.

Q. After this will was executed did you go to the house after it was read to the family?

1441 A. I was there when it was read to the family.

Q. Was you there before it was read, and after he died?

A. I was there on the night when he died—the evening.

Q. He died on Saturday night?

A. Yes, sir; I was there on Saturday night.

Q. Was you there at the time he died?

A. No; I was there on the same evening.

Q. Very soon after?

A. Very soon after that. 1442

Q. Then, when did you go there again?

A. At the reading of the will.

Q. Not before?

A. I went there after he died, once, and I saw Mrs. Gates there in the hall; that must have been on Monday, I think, or Tuesday.

Q. Who was with you?

A. There was no one with me.

Q. When was you there again?

A. That was at the time the will was read. 1443

Q. The next time—when was you there?

A. I don't think I was ever there after the will was read.

Q. Was you in the library with Mr. Hulbert on Monday night or Tuesday night?

A. I was in the library with him one night after the will, after Carlton had died; Dr. Arnold was there, and I then read from the copy which I had taken that clause with reference to his having been poisoned, in order that the proper action might be taken with reference to that. 1444

Q. Was that the only time you were in the library after his death?

A. The night I saw Mrs. Gates in the hall, I was in the library with Dr. Hulbert.

Q. What were you engaged doing?

A. Well, we were engaged in general conversation; the question was I think discussed, as to when the funeral would be; it was before the funeral.

Q. How long were you there that time?

A. I was there I suppose an hour likely. 1445

Q. You were not discussing the funeral all that time?

A. No; I don't recollect the particulars of our conversation; I think that we spoke about—I think that we did speak about Carlton.

Q. About his will?

A. Nothing of the contents of the will were spoken about at all by me to Dr. Hulbert, excepting that clause in relation to the poisoning until it was read.

Q. Did you discuss or mention to Dr. Hulbert the bequest in his favor, at any time after the will was executed?

- 1446 A. Never ; I never did.
- Q. You did not inform him of it after Carlton was dead ?
- A. I religiously kept that to myself as I was enjoined to do.
- Q. Did you keep from mentioning the other bequests also ?
- A. The bequest to the Village of Yonkers I found was in the possession of everybody in Yonkers, and then I spoke about it myself.
- 1447 Q. Did Carlton give you any injunction in regard to not mentioning that ?
- A. The only specific injunction was in regard to Dr. Hulbert, but he told me to keep the entire contents of the will to myself ; that is about as near as I recollect the thing.
- Q. Did he assign any reason for that ?
- A. No.
- Q. Did you ask him for the reason ?
- A. No ; I supposed I knew the reason.
- 1448 Q. What was the reason ?
- A. The reason was that he desired—that it was will, and if he did not die he probably did not care to have the people know what will he had made. It is usual, I believe, for testators to desire to have their wills kept secret.
- Q. He was very much averse to its being known that Mr. Hulbert had any interest under the will specially ?
- A. Well, I have used the language.

*Re-direct examination by Mr. LYON :*

- 1449 Q. Where is that schedule—the first schedule which he directed ?

[The schedule was produced.]

- Q. Was there any direction by him at any time, or any intimation of a direction to make that schedule a part of his will ?
- A. No, sir ; there was not.
- Q. Was it not a mere statement of the property he had to give away ?

A. I so regarded it. 1450

Q. And when he stated there was \$27,000 of American exchange stock in his name, he stated that he was really but the owner of \$7,000 of that?

A. That is the way I understood it.

Q. And as the title stood in his name, it was information to be given to the trustees to transfer that to his mother?

A. That was my idea.

Q. Did he ever direct or state that that schedule should be annexed to his will? 1451

A. No, sir.

Q. It was put in an envelope so that the information should be given to the executors?

A. The will, codicil and schedule were to be sealed together in one envelope.

Q. Where a testator gives to the counsel in charge of drawing his will, or to any other person, a schedule of his property, in which he states that a certificate of stock standing in his name belongs to him only to the extent of seven thousand dollars, is not that a sufficient 1452 direction to authorize an executor, after his death, to transfer that twenty thousand dollars worth of stock to the person indicated, in your opinion, as a lawyer?

A. I so regarded it, and do now.

Q. At any time during the time for the execution of the will did you ever suppose that it was your duty to make that schedule a part of his will?

A. I did not.

Q. Did you ever understand, in any way, that that direction in regard to twenty thousand dollars was to be 1453 a part of the will?

A. I did not.

Q. Or anything more than an indication of what he really owned, and what his beneficiary interest was in that particular stock?

A. I did not; I only got it as it was dictated to me in this schedule.

Q. In your cross-examination the other day you are reported as using this language at one of the interviews

1454 between you and him: "He said to me" at that time that the trust estate, "of course, he could not dispose of in his will—that it would be necessary to apply to the Supreme Court for that"—what did you mean to be understood as to what he spoke of there?

A. He told me that he was trustee of the estate there at Yonkers for his mother, and, in case of his death, he could not undertake to devise or bequeath that trust—it must be changed by application to the Supreme Court.

Q. On that Friday when he had some conversation as  
1455 you stated—some general conversation, of which you took some memoranda—in which he spoke of Doctor Wood being an executor, etc., did he not also on that occasion speak of Doctor Wood as being a legatee of the traps about the house;—you used the language that he spoke of Doctor Wood being a legatee—a legatee of what?

A. Well, he referred—the reference he made to Doctor Wood was, that he gave to him all of his cabinet; he dictated to me this clause that I have read; that is all  
1456 he said with reference to Doctor Wood at all.

Q. He never at any time indicated to you that he intended to make Doctor Wood a legatee of anything excepting his cabinet?

A. No, sir—nothing at all; he dictated almost the language in reference to Dr. Wood.

Q. I wanted to know whether he spoke of him as a legatee at any time of anything else except the cabinet?

A. No.

Q. On your cross-examination, you were asked: Did  
1457 you have any discussion or conversation with Mr. Hulbert in reference to any of the provisions in this will before the will was executed?

A. No.

Q. Nothing whatever?

A. No, sir; I steadily avoided it.

Q. Did he undertake to talk with you about it?

A. Not; excepting, I think, to answer my inquiries.

Q. Well, what inquiries did you make?

A. Well, I made—I think I have stated the substance

of them ; when I gave directions to him, I knew he was 1458  
the executor in the will, and I gave directions as to  
where he should go to have the will drawn, in case of my  
absence, and I asked him to get the names of the parties.

Q. By parties you mean the names of the servants in  
the house ?

A. Yes, sir.

Q. The servants that were there had been lately intro-  
duced in the house and you did not know their names,  
and Mr. Gates referred you to Doctor Hulbert to get  
their correct names so that their names might be cor- 1459  
rectly inserted in the will—was that the truth of it ?

A. Yes, sir.

Q. That is what you mean by parties ?

A. Yes, sir.

Q. You were then asked : Did he tell you anything  
about the domestic affairs of this family ?

A. Yes, sir.

Q. During the pendency of this will ?

A. Yes, sir ; he said that Doctor Gates had been obliged  
to have the family—the old lady—kept from the house. 1460

Q. In reference to that conversation, did he speak in  
that connection of what the physician had directed was  
necessary from the nervous, excited condition that Carl-  
ton was in, that Mrs. Gates should be requested to leave  
the house—did he at any time indicate that he had  
taken upon himself any initiatory steps in that respect,  
except under the direction and by the request of the  
physician ?

A. I think he said at that time that the physicians had  
considered it necessary and essential to his recovery that 1461  
Mrs. Gates should not be there.

Q. In any conversation with Doctor Hulbert upon that  
subject did he ever leave or state anything that left upon  
your mind the impression that it was of his own motion  
seeking for the removal of Mrs. Gates from the house—  
was there anything of that kind ?

A. No ; I saw nothing of that kind.

Q. Was it all indicative of a desire on his part to  
contribute to Doctor Gates' comfort, so that he might

1462 recover—you were asked and you answered, I believe, partially, in regard to how Dr. Hulbert came there—at whose request and desire did he state in that conversation you spoke of that he came down there to the house?

A. At the request of Carlton, who sent up for him.

Q. Did he state that Carlton asked him and requested him to come there?

A. He wanted him to come there and stay with him, and to be there as much of the time as he could; that he had nobody there that could administer to his comforts,

1463 and that he was very sick, and he would be very happy indeed if he would stay there all the while.

Q. In your direct examination you said, that during this occasion when you were talking over the will and he had insisted on having the clause in regard to the reasons why his mother was left out inserted, you were asked whether anything occurred to excite your suspicion—whether you saw anything about him which indicated his incapacity to make a will—now, in what connection did he make that statement to you?

1464 A. In connection with the remark that “you have left out a very important clause in my will; I don’t see how you dared assume the responsibility; this is my will you are drawing—it is not your will;” in connection with that conversation he asked me that question.

Q. How did he put it—just state it as you recollect he put the question to you?

A. Well, “do you see anything that indicates a want of capacity for me to transact business?”

Q. In that way?

1465 A. In that way, smiling at the time; that was after I had complimented him on his method of transacting business; I had told him that he was a very difficult man to get along with.

Q. Now, sir, in any interview from the time that you were first called there up to the day of his death, were the contents of Dr. Gates’ will ever the subject of discussion or conversation, or reference between yourself and Dr. Hulbert, except to ask him the names of the servants in that house?

A. No, sir.

1466

Q. In the course of your cross-examination have you intended to be understood in speaking of any of these interviews with Dr. Hulbert, as having communicated to him any of the contents of that will, or of the intentions of Dr. Gates in regard to it?

A. Not at all.

Q. You said, in regard to the codicil, that you were free to express that you did not make much dispatch in getting that paper executed, "for I did not think there was any fear of his dying, and rather delayed it than otherwise"—1467 what did you mean by that expression, "that you rather delayed it than otherwise"?

A. The day after the execution of the will, Friday, was an intensely hot day, and I felt very little like transacting business, and did very little work on that day; it could have been executed with a good deal of difficulty on Friday, but I let it go over until Saturday; there was no intentional delay.

Q. Now, sir, how came that codicil to be prepared by you—what did he direct in regard to it and when? 1468

A. It was suggested to me at the time the will was executed, by Mr. Radford, a witness, who was then present.

Q. Mr. Radford heard the will read?

A. Yes, sir; why, I did not make a restricting clause, or why such a clause was not made; he said that the Village of Yonkers might cut up the property into lots and use it for other purposes than public purposes; I told him that it had not suggested itself to my mind, and that Carlton had said nothing about it; he asked me why I did not suggest it to Carlton, because he thought 1469 that he would readily coincide with the idea; I told him that I thought I would, and after the will was executed; a very short time afterwards, I returned there and made the suggestion to Dr. Gates, and the reason why I thought there should be a restriction, both if the village chose not to accept it, or if they should use it for other than public purposes, that then it should revert to some other parties; he assented to that; then I asked him to whom; who I should name as the residuary legatee in

1470 such a contingency, and he said Dr. Hulbert; the codicil was framed with a special reference to that interview.

Q. You told him that you would prepare it and would have it ready some time for execution.

A. Yes, sir.

Q. Did anything pass between him and yourself in regard to the witnesses, as to whether the same witnesses should be called in or others should be provided?

A. I think I told him I would have the witnesses there on the following day; I believe I attempted to, but—

1471 Q. Well, was there anything in his condition at that time that excited your suspicion of his near dissolution—that is, did you think there was any danger in letting this matter go over Friday until Saturday, from what you saw of him?

A. I did not; I thought he was going to get well, and was perfectly surprised when I went up there on the Saturday and found that he was dead; I was very much astonished.

Q. The delay was not caused even in the most remote  
1472 degree, by any desire on your part that he should not execute the codicil, or any doubt about his fitness to do it?

A. Not at all.

Q. Now, on the occasion subsequently when that schedule was talked of there, which was a mere list of his property, you prepared the paper which was put in evidence here by the contestants from that original paper, and then you read it over to him, and he added to it when you read it to him—what then took place between

1473 him and you?

A. This schedule which is introduced in evidence was never read to him, but there was—I think I have another schedule.

[Witness here examined his papers.]

Q. Never mind, just state the facts in regard to it?

A. There was another paper partially prepared, and that was read to him, and to that he made additions, all

of which are contained in this paper that has been introduced in evidence. 1474

Q. Then the paper which has been introduced in evidence was never actually read to him?

A. That was an engrossed copy, taken from the original directions given by him.

Q. The directions he gave you were taken down by you and read over to him, and he made additions, and you then had an engrossed copy made?

A. Yes, sir.

Q. And that paper you intended to have had that read to him, and adopted in some way at the time the codicil was executed? 1475

A. I did; I intended to have had it done on Friday.

Q. In your cross-examination this morning in swinging from questions of fact to matters of law, you got into the half-way house, as is usually the case, some little confusion occurred; the word omission, on your part, occurs two or three times—that you omitted something—it not having occurred to you. Do you mean to be understood by that that you omitted from the will any of the substance of that schedule as to the property or any direction in regard to the \$20,000 of stock that you omitted from the will anything that you ever intended to put in to it in regard to that? 1476

A. I mean to say that I put everything into that will, everything that I supposed that he wanted or should go into the will; I put this in the schedule simply because it was given to me as a memorandum of his assets; it was not given to me as a part of his will at all.

Q. Then in anything you said about omissions you do not mean to be understood that it was any omission on your part of what he had instructed you to do in regard to the will? 1477

A. No, I do not.

Q. You were also asked some hypothetical questions, assuming a great variety of facts to exist, as to what you would have done under the existence of such facts; now, let me put a question to you: suppose a person who has not been actually poisoned, but who has reason to think

1478 from circumstances that he has been poisoned, strengthened very much by the condition of his stomach ; suppose that under that state of facts he shall be of opinion that he has been poisoned, and act upon that to the extent of making a provision to have the poisoner searched out ; would that state of facts, being in the mind of the testator, in your judgment, be evidence of any delusion which incapacitated him from doing business ?

A. I should think not.

Q. So that if he was under the impression, and had 1479 reason to believe that a person who was near to him was through mistaken kindness, if you choose to put it so, pursuing a course of conduct that very much interfered with his comfort, and with his chances of recovering his health, and he should speak of that person at times in this way : saying that he could not account for her conduct except by the fact that she was insane ; would that opinion which he had of that person be in your mind any evidence of an insane mind, or that he was acting under a delusion ?

1480 A. I should think not ; you are putting these hypothetical questions, but I know so much about this case, that perhaps my answers are governed to some extent, by my knowledge concerning it ; knowing as much as I did about the family relations, I could not believe that what he said about his mother indicated anything of insanity, or anything that bordered upon it.

*Re-cross examination by Mr. VAN PELT :*

Q. With regard to this \$20,000 of stock again, do not 1481 you know that that stood in his name the same as all the other stock which he had got from his mother—and securities ?

A. I don't know anything about it.

Q. You do not know ?

A. No ; I only know what I wrote down from what he said.

Q. Do not you know that the rest of the stock and securities were just as much his mothers as that \$20,000 that he directed to be transferred to her ?

A. I certainly did not know anything except what he 1482  
told me ; I have no means of ascertaining.

Q. Do not you know that he had obtained that from  
her in the same way that he obtained the rest of the  
property ?

A. I did not know how he obtained it ; I did not know  
anything about it except as I have stated before.

Q. I understand you to say that her getting this  
\$20,000 thus directed to be transferred to her would de-  
pend altogether upon no accident happening to you as  
the witness ? 1483

A. If you so understand, you understand differently  
from what I said.

Q. What other security would she have ?

A. I said that if all the other evidence of her right to  
have this property were lost, that probably they could  
not prove it was his intention to have it transferred.

Q. Tell us what other evidence there was ?

A. I understood that he told the executor himself.

Q. Who ?

A. That he did not make any claim on this \$20,000. 1484

Q. What executor did he tell ?

A. He told—I think he told that to Dr. Hulbert ; I  
think Dr. Hulbert has told me since his death that he  
told him that.

Q. Supposing that some accident should happen to  
you, then Mrs. Gates' prospect of getting that \$20,000 of  
stock would depend altogether on the course taken by  
Dr. Hulbert, would not it ?

A. Well, inasmuch as my testimony is already taken,  
I suppose it would not make any difference now. 1485

Q. We are looking at this thing at the time it trans-  
pired ; there would be no other evidence so far as you  
know ?

A. So far as I know the only evidence of the contents  
of this schedule was Mr. Mitchell and myself.

Q. The schedule itself, and two loosely drawn papers  
all in your possession ?

A. Well, the evidence of Mr. Mitchell was in his own  
possession.

**1486** Q. Mr. Mitchell, you think, knew that fact?

A. I know that he did.

Q. How did he ascertain it?

A. From me.

Q. You informed him of it?

A. Yes.

Q. In what way?

A. By the memoranda I had taken; by word of mouth.

Q. Did you give him any paper or any evidence of  
**1487** it?

A. The papers I have here he saw.

Q. But other than the memoranda—other than that information he possessed from you, your own knowledge and the knowledge of Mr. Hulbert would be all the evidence to support Mrs. Gates' claim to that \$20,000?

Mr. LYON: Does the witness understand.

Mr. VAN PELT: I guess he does; wait until we get his  
**1488** answer.

A. Oh, no, of course not.

Q. What other evidence would there be?

A. Well, I suppose there are a great many people who know that that property belongs to Mrs. Gates.

Q. Are there any who know that that property belongs to her who do not know that the rest of the property belongs to her?

A. I do not know who knows anything about it.

**1489** Q. It is all supposition with you, then, that anybody knows anything at all about it?

A. It is a very strong belief with me that Mrs. Gates knows what belongs to her.

Q. I ask you what evidence there would be to support her claim to this property that stood in the name of Dr. Gates, except that of yourself, Mr. Mitchell and Mr. Hulbert?

A. I do not know what evidence Mrs. Gates had.

Q. You do not know of your own knowledge?

A. No, I do not know of any evidence excepting Mr. 1490 Mitchell, myself, and what Dr. Gates told Dr. Hulbert, and the paper memoranda.

Q. In your possession?

A. In my possession.

Q. Now, the only other property that Mrs. Gates had that Carlton referred to when he said that she was abundantly provided for was this homestead, was not it—did he say that she had any other property?

A. I think he said that she had this \$20,000—the interest upon it, and then that she had the income of the 1491 estate, and asked me what the estate would bring in; I do not think that he referred to a legacy which she had from her sister.

Q. Will you explain how she would be able to live in the homestead there and maintain herself?

A. Do you want me to explain how that place could be made to pay?

Q. I wish to know how she was abundantly provided for to live there in the homestead, as she had been in the habit of living, with no other resources than the interest 1492 on this \$20,000?

A. If you ask my opinion, I do not think that she ever spent \$20,000 a year in her lifetime; supposing that she wanted to live in the homestead in the way that she had been in the habit of living, she had an income of \$2,000 a year besides, and a part from an income of \$80,000 which she had from her sister.

Q. Had she?

A. I understand she has an income of \$80,000; I do not know anything about it. 1493

Q. From whom did you understand that?

A. From the testimony taken here.

Q. That she has an income of \$80,000 from whom?

A. From her sister; I read it in the papers; I don't know anything about it; then, she had, besides, the homestead, and the income from this \$20,000.

Q. I wish to know about this \$80,000 legacy—from whom do you understand that she has that?

A. I understand that there was a legacy left to Mrs. Gates and her sister of \$80,000 a piece.

1494 Q. Do you not also understand that that went into the possession of Carlton with this other property which he has disposed of by will?

A. No; I did not understand so—I never heard of it.

Q. Well, that is the fact?

A. I never heard of it, and I do not believe it; I tell you all that I know about it is what I have read of the testimony; I have read in the papers that Mrs. Gates has besides this \$20,000, which is bringing 10 per cent., the income of the estate, and the income of \$80,000; that

1495 is what I have read, and I don't know anything more about it than that.

Q. Who testified to that?

A. I don't know that now—I have forgotten.

Q. When was it testified to—on what day?

A. I think it was in the interview before last; either the last interview or the one before.

Q. Leaving that out of the question, what income had Mrs. Gates to sustain her in that household?

A. I don't know anything about what Mrs. Gates had 1496 at all, except from what Carlton Gates told me.

Q. Did Carlton tell you that she had \$80,000?

A. No.

Q. All he told you was that she would have the income from this homestead, and the \$20,000, did he not?

Q. (By Mr. LYON): What did he state on that subject?

A. He said that she had the interest on \$20,000, and he then said to me: "She has the rents and profits of this estate; what could this estate be made to pay?" I told him I did not know; "Well," said he, "Could it 1497 not be made to pay \$15,000 a year?" I told him that I thought, at any rate, it might be possibly so arranged as to make it pay \$10,000; he then said: "She has an income more than sufficient to make her comfortable."

Q. Now, then, as the basis of your valuation of her income you assume that she would have to leave the homestead and rent it, or put it to some other use?

A. I assume that to make that property pay, that it should be turned into some other use than a homestead.

Q. And that she would have to leave?

A. No, not necessarily ; the lease could be so arranged 1498  
as to pay very largely, and she still remain in the home-  
stead—it is a very valuable property.

Q. It would require capital, would it not, to improve  
it ?

A. Yes.

Q. How much capital would she have to outlay ?

A. She would not have to lay out a cent ; she could  
lease the property and make it pay five per cent. and re-  
tain the homestead in almost its entirety.

Q. For how long a time could she make such a lease ? 1499

A. For her lifetime.

Q. At her time of life who would take a lease from her  
and pay a high rent ?

A. Well, I don't know ; I would not pay a very high  
rent, but I would pay something.

Q. What objection was there to disclose to Mr. Hul-  
bert the fact that Carlton was making him residuary  
legatee ?

A. The objection of the testator.

Q. Yes, or any objection you discovered ? 1500

A. I say the objection was the objection of the testa-  
tor, nothing more ; do you want to know what I think  
the objection was.

Q. I ask you if you know what the objection was to  
letting Doctor Hulbert know that he was being made  
residuary legatee ?

A. That Carlton had.

Q. No, no.

A. Whose objection ?

Q. Yes, that Carlton had ? 1501

A. Now, you want me to state what Carlton's objec-  
tion was ?

Q. Yes ; that is what I want to get.

A. Well, I think that Carlton was alienating his estate,  
and he knew very well that the will was different from  
an ordinary will—that is, that the relations of the family  
were different ; and I do not suppose that he cared to  
have that will disclosed as long as he was living.

Q. What was the objection to having Mr. Hulbert, the

1502 person for whose benefit the estate was being alienated, know?

A. I don't know what objection he could have had; I know what my objection was.

Q. To Mr. Hulbert's knowing that he was residuary legatee?

A. Yes.

Q. What was it?

A. In the first place I wanted to carry out the will of the testator, and in the second place I thought it highly  
1503 proper that the contents of this will should not be disclosed to any one.

Q. Well, but the other legatees knew Carlton had told Dr. Wood that he intended to make him a legatee, and Mr. Hulbert gave you the names of the other legatees?

A. Oh, no; the only person who did know, so far as I understand, was Dr. Wood.

Q. Now what objection was there to Mr. Hulbert himself, knowing that he was to be residuary legatee?

A. Do you wish to know my objection?

1504 Q. Yes.

A. My objection was that it did not seem to be proper that this will should be disclosed to anybody.

Q. Now, what impropriety would there be in Mr. Hulbert knowing that he was going to be residuary legatee—why should the facts be kept so studiously from him?

A. I do not suppose that it would have done any harm to tell Dr. Hulbert, if I had been permitted to do so, that he was a legatee.

Q. None?

1505 A. None, if I had been permitted to do so, excepting that it might be used upon a contest of the will—his knowledge of that fact; if I was an attorney, I should certainly advise that the contents of the will should not be disclosed, in case there was a contest expected upon the ground of undue influence.

Q. And it was withheld from Mr. Hulbert therefore, in order that evidence might not be furnished to contest the will?

A. No, sir; I did not use that language.

Q. Well, that was the fact ? 1506

A. No ; I will repeat my language if you desire it ; I should advise, in case I was an attorney in the drawing of a will likely to be contested, that the contents of the will should be kept from the legatees upon the ground that their knowledge might be used as an evidence of undue influence.

Q. And it would be in the interest of the person in whose favor the will was made therefore, to keep the knowledge from him ?

A. Entirely so. 1507

Q. And against the interests of the person you thought would be likely to contest it ?

A. Most certainly ; there was another reason why I did not communicate with Dr. Hulbert, which I had not thought of, and that was that it was necessary that he should be there, at least Dr. Gates thought that it was necessary that he should be with him constantly, and if I had conveyed to him that he was a legatee under the will, it would have been a very delicate matter for him to remain there ; that is another thing which operated upon 1508 my mind.

Q. You thought it was a very delicate thing for Mr. Hulbert to receive this legacy under the circumstances, then ?

A. No, sir, I did not.

Q. Won't you repeat what you have just stated ?

A. I stated that another reason why I did not communicate the contents of this will to Dr. Hulbert, was that Dr. Carlton Gates thought it was for his benefit that Dr. Hulbert should remain there in the house to attend to 1509 his personal comfort, and if I should communicate to him the fact that he was a large legatee under the will, taking all the circumstances together, that it would be a very delicate thing for him to remain there in the house.

Q. You have said that if Carlton had had a disease that produced effects similar to poison ; that it would be no evidence of delusion if he made an appropriation in his will to have the persons he thought had poisoned him prosecuted ?

1510 A. I did not use that language.

Q. Well, it is the substance of it?

A. I prefer to have the precise language repeated to me, and I will then repeat my answer; I do not want the shadow, I want the substance entire; if you want me to give an answer again as I understood it, I can conceive of persons making the same bequests made in that will, and being perfectly sane.

Q. Suppose that he was advised by his two or three attending physicians that he was not poisoned, and that  
1511 his symptoms and sensations could be accounted for by the disease that he was laboring under—do you think that he could still be under the honest and intelligent belief that he was poisoned?

A. Well, being a physician himself, and knowing what the symptoms of poisoning were, I suppose that he might differ with two physicians, and still labor under the impression that he was poisoned without being crazy.

Q. Why did you not put in the will the \$50,000 that he told you to put in for the poisoning prosecution?

1512 A. Well, I thought it was unnecessary; the matter was left somewhat to my judgment; that is, he asked me what such a prosecution would cost, and I really did not understand exactly what kind of a prosecution he meant, and never did understand; I supposed that he knew very little about legal charges, and I thought that \$10,000 would be enough.

Q. Did you advise him so?

A. I told him I thought that \$10,000 was sufficient.

Q. But he thought that \$25,000 was absolutely neces-  
1513 sary?

A. "Well," he said, "what did we agree upon;" I said that he had mentioned \$50,000, and that \$25,000 was talked about; I had subsequently put in \$10,000 myself, and he then said make it \$25,000, and I did not seek to change his mind any further; I had had trouble enough.

Q. You found that he was very set and determined in his way, did not you?

A. I found that he was bound to make his own will in his own way.

Q. Where is the other schedule that you prepared, 1514  
which you handed to me the last day?

A. That was not finished.

Q. Which was prepared first, that or the completed  
draft?

A. That is the schedule you have there.

Q. Well, which was prepared first?

A. Well, I don't know; the unfinished one undoubtedly was, because the other was finished.

[The incomplete copy of the schedule was offered in 1515  
evidence by Mr. VAN PELT, and marked contestants'  
Exhibit "C."]

Q. Did you and Doctor Hulbert, or did Doctor Hulbert  
in your presence examine any paper after Carlton was  
dead—examine any papers or letters in the library?

A. Not to my knowledge he did not.

Q. Did you write any there yourself?

A. No, sir, I did not; I do not think that I wrote a  
word there in that library.

1516

(Signed) WM. ROMER.

Mrs. MARTHA GATES being re-called, was re-cross ex-  
amined by Mr. LYON, and testified as follows:

Q. You know Mrs. Migy?

A. I do.

Q. At what time was it that she went to your house,  
or your son's house?

1517

A. About the first day of August.

Q. Who first invited her to come to the house?

A. I went myself and invited her.

*Re-direct examination by Mr. VAN PELT:*

Q. Please state under what circumstances and for what  
purpose you invited Mrs. Migy to your house?

A. Well, my son was under this nervousness—I should  
call it derangement, but I did not like to tell Mrs. Migy

1518 so ; I wished her to come, and she came ; she had been keeping school ; this was about the 1st of August ; and I thought she would be a companion in the house, and that talking French, it might amuse Carlton.

Q. Was you fearful of being alone with your son ?

A. Yes ; I did not like to be alone.

Q. And you invited her to the house ?

A. Yes, sir, as a friend.

Q. For the entertainment of your son, and for your own protection ?

1519 A. Yes, sir ; the talking French, I thought, it would amuse.

(Signed) MARTHA GATES.

On motion, adjourned to Tuesday, December 14, 1869.

JOHN W. MILLS,

*Surrogate.*

December 14, 1869.—Met pursuant to adjournment.

1520 Present—The SURROGATE, Mr. LYON, Mr. PRIME, Mr. VAN PELT, and Mr. NORRIS.

On motion, adjourned to Thursday, December 23, 1869

J. W. MILLS,

*Surrogate*

December 23d, 1869.—Met pursuant to adjournment.

1521 Present—The SURROGATE, Mr. LYON, Mr. PRIME, Mr. VAN PELT, and Mr. NORRIS.

LEVI P. ROSE, being recalled by proponent as a witness in behalf of said will, and examined by Mr. LYON, testified as follows :

Q. You have already testified to the circumstances of the execution of this will upon the fourteenth day of August, I think it was ?

A. Yes, sir.

Q. That is the paper (handing witness the original 1522 will); now, Mr. Rose, from all that you saw the testator, Doctor Gates, do on that day, or from all that you heard him say, was there anything to induce you to suppose that he was not of sound mind and memory?

A. No, sir.

Q. What did you think on that occasion of his capacity to execute a will?

A. I regarded him as perfectly competent to make a will.

1523

Being *cross-examined* by Mr. VAN PELT, he testified as follows:

Q. What is your business?

A. I am engaged in the commission business—shipping—I sell agricultural tools on commission.

Q. You have always been a merchant?

A. Yes, sir.

Q. You have never been a physician, of course?

A. No, sir.

Q. You do not profess to be an expert on the subject 1524 of insanity?

A. No, sir.

Q. Suppose you had known that Carlton Gates was in the habit of charging his mother with having poisoned him—that he thought she was insane—that he was in the habit of choking her, kicking her, throwing knives at her, squeezing her face so as to force out a tooth, threatening to shoot her, tearing the clothes off her person, and driving her away from the premises, would you have thought he was in his right mind and capable of making 1525 a will?

A. Well, I should have concluded he was acting under the influence of liquor or that he was insane.

Q. He must have either been under the influence of liquor or insane?

A. I should think so.

Q. One or the other?

A. I should think so.

Q. And in either of those cases he would be incapable

[illegible]

A. I think not. 1530

Q. But that he continued in [the same feeling towards her?

A. I think not.

Q. Eh?

A. I did not think so.

Q. From the way he acted, then, he left the impression upon your mind that he felt very bitter to her?

A. On the first interview he did.

Q. And he never did anything to change that impression? 1531

A. He said nothing.

Q. And did nothing?

A. No.

Q. Now, will you please account for the change of your own opinion without any reason from him to authorize it?

A. As I stated on my first examination before the Court here, I regarded him as decidedly excited from liquor; after that first call I did not see him under the influence of liquor at all, and I attributed a great deal of 1532 his bitterness and excited talk to the excited condition of his mind from liquor at that time.

Q. On how many occasions did you see him under the influence of liquor?

A. Well, I saw him on that occasion, and I had seen him once before on the street.

Q. Twice?

A. Twice.

Q. On any other occasion?

A. No, sir. 1533

Q. How many times did you see him in all from the time he was first taken sick until he died?

A. Nearly every day.

Q. About how many times in number?

A. I should think perhaps ten or twelve times in all; sometimes I was there twice a day.

Q. And you spent how long a time with him?

A. Well, from half an hour to an hour, and an hour and a half.

1534 Q. What did you talk about principally when you were with him ?

A. Well, the first interview I had with him was pretty much consumed in his talk with reference to his mother.

Q. (*By Mr. LYON*): Try to fix the day of the month that was ?

A. That was on the 11th of August.

Q. The first of the two times you saw him in liquor was in the Spring, in the streets, wasn't it ?

A. Yes, sir.

1535 Q. And the next time on the 11th of August ?

A. Yes, sir.

Q. Did he ever ask you or express any wish to see his mother ?

A. Not to me.

Q. And he never made any allusion to her at all after this first talk against her on the 11th of August ?

A. I think that was the only occasion on which he spoke of her.

Q. Did you see Mrs. Gates at all during this sickness of Carlton's ?

A. Not until after his death ; I saw Mrs. Gates at the house on the evening of his death.

Q. Where did you see him on the 11th of August ?

A. I saw him in his bed on the 11th of August.

Q. Was he not able to get out of the bed ?

A. I do not know whether he was or not ; he was lying in the bed ; it was in the evening.

Q. Do you not know that he indulged in this same feeling of bitterness and antipathy towards his mother at all times, both when he was under the influence of liquor, and when he was not ?

A. I do not know that fact—I never have heard.

Q. I did not ask you what you have heard, I only asked what you know—if you had known that he had that same feeling of antipathy and hostility towards his mother when he was not under the influence of liquor—then I understand you to say that you would have thought him insane ?

A. I do not say that.

Q. What do you say? 1538

A. I say that I should have known he was under the influence of liquor; I never heard the question of his sanity or insanity raised.

Q. I suppose he was sober when he did those things—what answer do you now give?

A. Well, I should say he was a very unnatural son.

Q. You would—would you consider that he was in his right mind towards his mother?

A. No.

Q. And would you consider him incapable of properly 1539 considering her claims upon his bounty?

A. Well, if he were drunk when he was making his will, I should say no, he was not competent.

Q. You have exhausted the subject of drunkenness, and now I am on the other subject; I ask you this question; if he indulged in this same spirit of bitterness and hostility and antipathy towards his mother when he was not under the influence of liquor, would you consider him in his right mind so far as to be able to consider his mother's claims upon his bounty in making a will? 1540

A. I should say his mind was in a frame that unfitted him for the disposition of his property by will.

Q. You would not have witnessed his will if you had been aware of those facts—would you?

A. I would not have witnessed his will if I supposed he was insane.

Q. If you had known he was in this state of feeling towards his mother, and not under the influence of liquor, would you have witnessed his will?

A. I doubt if I would—not I—understand me—not that 1541 I did not consider him from the 11th day of August, to the time of his death, or until the time I last saw him, perfectly competent to make a will; so far as my judgment was concerned, I considered him perfectly competent, or otherwise I would not have witnessed the will.

Q. Did you have an opportunity to discover whether he was under a delusion with regard to his mother?

A. No; I am not sufficient expert to decide as to the peculiar formation of his mind temporarily; I noticed,

1542 and always knew he was peculiar in his notions and habits.

Q. Do you know to what extent a person must be under a delusion to incapacitate him from making a will?

A. No; I do not know that I have ever heard the point defined.

Q. Then how are you able to swear that you believe that he was perfectly sane when he made this will, and from the 11th day of August?

A. For the reason that I believe, I am competent to 1543 judge whether a man is in his right mind or not, so far as to satisfy my own mind; I may not satisfy yours, but I think I am competent to judge to my own satisfaction, and to govern my action by my own judgment in the matter without any reference to what your opinion might be, or the opinion of an expert.

Q. Could he not have had this delusion with regard to his mother during all your interviews with him, and you not have discovered it?

A. I do not know but he might.

1544 Q. And assuming that he did have that delusion, you would think that he was incapable of properly considering his mother's claims upon him?

Mr. LYON: What delusion?

Mr. VAN PELT: The delusion with regard to his mother.

Mr. LYON: A delusion in regard to what subjects?

Mr. VAN PELT: The delusion that I have stated in full 1545 ifernence to his mother.

A. Well, if had been called upon to advise him, and he had continued in that same frame of mind on every visit I made to the house, after the 11th day of August, I would have advised him to defer making his will, if I had been called upon to advise him.

Q. And you did not talk with him on the subject of his mother after the 11th of August?

A. I did not.

Q. How do you know that he was not in the same state 1546  
of mind towards his mother as then ?

A. Well, because the first of his conversation with me  
on that evening was directly charging his mother with his  
uncomfortable position, and the various annoyances and  
excitements about the establishment, which had tended  
to make him worse than he would have been if he had  
not been excited by these changes.

Q. Where was his mother then ?

A. I do not know.

Q. She was not there ?

1547

A. She was not in the house.

Q. She had been driven from the house—hadn't she ?

A. I heard she left the day before.

Q. Did you see her there after ?

A. I did not until after.

Q. You understand she was kept from going there ?

A. I understand she left the house, and that it was his  
request she should not return.

Q. And did not that look as if he continued in the  
same state of mind towards her.

1548

A. Well, I do not think so.

Q. Why not ?

A. Well, I do not think he manifested any feeling  
about the matter after the first interview.

Q. But he had driven her from the house then, hadn't  
he ?

A. I do not know that he had positively driven her ; I  
understood that he made the request that she should  
leave the house.

Q. And he persevered in keeping her away down to 1549  
the time he died ?

A. Yes ; I know she staid away, or, at least, my under-  
standing of it was that she did not return to the house  
from the time she first left except on one or two occasions.

Q. And do you mean to swear that that did not show  
that he remained in the same state of mind towards his  
mother down to the time he made his will ?

A. I do not ; I think his feelings towards his mother  
had softened.

1550 Q. Now, I want you to put your finger on the first fact that will justify you in forming that opinion, and swearing to it?

A. The very fact of his not bringing the subject up again; I stopped him—on that first interview I had with him I stopped him; I told him he was simply exciting himself to a degree that was going to be injurious to him, and that I would like to see him quiet down.

Q. And you stopped him right at that point?

A. Yes.

1551 Q. And you left him at that point?

A. I did.

Q. And you never talked with him again to see whether he continued to hold those feelings towards his mother?

A. No, sir; I did not wish to introduce the subject.

Q. Then how did you form the opinion that he had softened down in his feelings towards her?

A. I heard that he had talked very hard about his mother.

Q. I don't want that—this came from Carlton, that he  
1552 had told his mother to go away?

Mr. LYON: He has not said so.

Q. Did not you tell me that Carlton said that he had sent her away from the house?

A. No, sir; I did not.

Q. Did Carlton never tell you that he had sent his mother away, that she was exerting a bad influence on him, making him uncomfortable?

1553 A. I think his remark was that his mother had gone away at his request.

Q. At his request?

A. I am not perfectly clear about it in my mind; my impressions are that he said he had asked her to go to New York, and make a visit.

Q. Because of what?

A. Well, because he did not want her there; he said that she was breaking up his domestic arrangements, interfering with his servants to that extent that he could not keep any one in the house.

Q. And expressed much bitterness towards his mother, 1554  
didn't he?

A. He did.

Mr. LYON : Let us have what he said.

Q. Just tell us what he did say to show his bitterness?

A. Well, he spoke of her interfering with his engagements.

Q. Tell us his language to show his hostile feeling towards her?

A. It was an excited condition he was in, and I could 1555  
not undertake to use the precise language he did on the occasion, but it was a general tirade against his mother for having interfered and broken up his domestic arrangements.

Q. Now, I want you to specify the first fact that afterwards transpired that would justify you in swearing that you thought his feeling towards his mother had changed down to the time he made that will?

A. Well, I thought his whole deportment had changed, and manner, after that first interview, and I spoke of it 1556  
in the house.

Q. His whole deportment towards whom?

A. Towards everyone who came into the room while I was there.

Q. Well, his mother did not go into the room?

A. I know she did not.

Q. Then his deportment would not have changed towards her, could it?

A. No; I am speaking of those who did go in.

Q. I am speaking about his mother—I ask you for the 1557  
first fact that came to your knowledge showing that his feeling had changed towards his mother?

A. I do not know that there was a very radical change in his feelings, but my impressions were that his feelings towards his mother had softened down.

Q. I want you to state the ground on which you based that opinion?

Mr. LYON objected on the ground that the witness had

1558 already answered the question ; that he had stated three times that Carlton had never alluded to his mother after the interview of the 11th of August.

The SURROGATE remarked that he did not think anything was to be gained by having the witness repeat over again what he had said, and he appeared to have answered the question as fully as he could.

Q. I think I understood you to say that you considered that Carlton was in a very dangerous condition as early as Thursday before he died ?

A. I said that he was very sick ; I did not regard him as so immediately dangerous until Friday ; on Friday I did ; I expressed a fear that he was sinking.

Q. What did you see about him to make you believe that he was in the act of dying ?

A. His general appearance indicated a very sick frame.

Q. Did you see anything peculiar about his fingers ?

A. I noticed that the ends of his fingers were black on Friday evening—at least they were a very dark color ; they were not black—a dark color.

Q. Did you speak of that to any one ?

A. I think I did.

Q. Did you see Mr. Romer on that day ?

A. Yes, sir.

Q. Did you tell Mr. Romer that if he wanted any more papers executed he must hasten as Carlton was dying ?

A. No, sir ; that was on Thursday evening that I mentioned that fact to him, that I thought he should not delay if there were any further papers to be executed.

Q. What time was that, before or after the will was executed ?

A. Well, I think it was Thursday evening, perhaps, eight or nine o'clock.

Q. How many hours after the will was signed ?

A. The will was signed, I think, between four and five o'clock.

Q. Do you know what a delusion is ?

A. Well I have heard of such things. 1562

Q. Will you tell us what a delusion is?

A. Well, I do not know that I am expert enough to define a delusion of the character which you would like to have submitted.

Q. Do you know what a monomaniac is?

A. I have heard of them.

Q. Well, what is a monomaniac?

A. I have no particular desire to describe my idea of a monomaniac.

Q. Well, I have a particular desire to have you do it? 1563

A. I did not know that I was called here as an expert.

[Mr. LYON objected to the question; objection overruled; exception.]

A. Well, my own idea of it is, that it is a peculiar influence that is exerted over the mind upon one particular and positive object or thing—subject.

Q. An unnatural belief with regard to one person or subject? 1564

A. Yes, sir.

Q. Are you expert enough, or have you experience enough to be able to detect that trait in a person—this trait of monomania?

A. I think I could.

Q. In what way would you go about it?

A. Well, I should set my own ideas to work as to the peculiar features of the person's mind and character.

Q. Would you talk with him upon the subject?

A. Well, I do not know that I should make it a point 1565 of conversing upon the subject that I knew that a man—or at least that I had an idea that a man—was insane upon.

Q. How is that?

A. I do not know that I should talk with a man who I knew was insane upon a certain subject or matter, about that subject or matter.

Q. How would you find out that he was insane on that subject or matter without talking with him about it?

1566 A. Well, I suppose by my own ideas and judgment——

Q. By looking at him?

A. No, perhaps not by looking at him, although some persons I suppose, show a deranged mind by their looks.

Q. In what way would you find it out if you did not talk with him?

A. Usually those cases are spoken of and referred to by their friends, and they become general knowledge among the community where there is a case of that kind.

1567 Q. Then you would be governed by what outsiders said, and not by your own investigations on the subject?

A. Well, I have never made it a point to investigate a case of the kind, and therefore I am not prepared to say what course I should adopt if it was important; I should discover that fact.

Q. Did you take any course or any measures, to find out whether Carlton was a monomaniac?

A. No, sir; I never heard the question raised, and therefore the matter was never considered in my mind at

1568 all.

Q. Had you ever heard of his doing the things and saying the things that I have asked you in regard to his mother?

A. Not previous to his last sickness.

Q. Did you previous to his making the will?

A. Yes, I had heard the matter spoken of by persons in the house.

Q. Did you know that he had done the things that I have put to you as having been done?

1569 A. I did not.

Q. How long an interview did you have with him on the 11th of August?

A. Well, I should think I was in the room perhaps an hour; I did not talk with him all the time; Dr. Bolles came in while I was there and prescribed for him.

Q. Do you mean to say that he was drunk then, or partially under the influence of liquor?

A. I mean to say that he was excited, and that he was evidently under the influence of liquor, for I smelt it on his breath very strong.

Q. So much so as to be intoxicated? 1570

A. Well, I know he was very much excited; I do not know how much it would take to make him drunk.

Q. Do you know when a man is drunk?

A. That is a question that I have heard defined in various ways.

Q. Was he drunk?

A. I should say he was excited from an excess of liquor.

Q. Was he stimulated to such an extent as to be drunk? 1571

A. Well, I do not propose to define that point of a man's drinking.

Q. Did you see how much he had taken?

A. I did not; I saw a bottle of brandy on a stand beside his bed, and a bottle of champagne.

Q. You did not know how much he had taken?

A. I did not; I know his breath smelt very strong of liquor, and he was, as I have stated before, in an excited condition.

Q. What other subject did he talk about besides his mother? 1572

A. He talked to Doctor Bolles as to a prescription for himself.

Q. Did he talk to him rationally about it—sensibly?

A. Well, yes; but he was very much excited in his talk with him, and talked very loud.

Q. Did he talk with him rationally and sensibly?

A. Yes, sir; I thought so.

Q. Did he talk with him as though he was drunk?

A. As I remarked before, he talked excitedly. 1573

Q. But sensibly?

A. Yes.

*Re-direct examination by Mr. LYON:*

Q. The counsel has asked you several professional questions; I will ask you one: Suppose that those acts which the counsel has described should take place while a man is under the delirium of disease, would you suppose that had anything to do with his general sanity or insanity?

1574 A. No, sir.

Q. And if that disease had passed over—that symptom of disease had passed over, and he was not under that delirium—could not he return to his normal state, of sane and sound condition, in your judgment?

A. I should suppose so.

Q. Now, sir, suppose it was true, during even the time, on the eleventh of August, when he was very much excited, that his habits and tastes, and his mode of bringing up, which you knew all about, had been interfered with, in all the comforts of his household, so that he could not keep a servant in his house to cook food, and otherwise—would it be strange that he should feel, towards the person, in the condition of mind he then was, a disposition that she should go from the house, so that those things could not be repeated?

A. No, sir.

Q. Was it not natural that a person in failing health, who needed the sustenance of good and well-cooked food, should want the chance of getting it?

1576 A. Yes, sir.

Q. On this eleventh day of August you have described how he was, from that time up to the time you witnessed the will—I have understood you to say that you visited him pretty much every day?

A. Yes, sir.

Q. From that time, up to that Thursday and the Friday, was there ever anything in all that he said or did to cause the slightest suspicion upon your mind that he was acting under any delusion—insanity or otherwise?

1577 wise?

A. No, sir.

Q. Did he converse on various subjects with you at those times?

A. No, not on general subjects.

Q. State, if you please, some of the subjects he did talk about—on one occasion you went to him with woodcock or quail, I think, or something?

A. Yes.

Q. Well?

A. I carried him a bowl of soup that my wife had prepared for him, also woodcock, and he spoke of his having enjoyed the bowl of soup my wife had sent to him, the day before, I think, and said that he had relished it very much—seemed to do him good—and that he had rested the better for taking it—it was given to him late in the afternoon or evening—that he had rested very well the night before. 1578

Q. The day after you took the soup there he referred to it in that way?

A. Yes, sir. 1579

Q. Can you remember what day it was with reference to the will that was made on Thursday?

A. I took him the bowl of soup the day the will was made; I went up to the house before going with the other gentlemen to witness the will.

Q. Then it was on the Friday subsequent to that, that he referred to the fact expressing his obligations, &c.?

A. Yes, sir; there was another conversation I had with him in regard to the water he was drinking very freely of. 1580

Q. Vichy, or Kissengen?

A. No, it comes in small bottles; I forget the name of it—Carbolic water; he was drinking very freely of it; I waited upon him two or three times in half an hour on one occasion and he asked me to take a glass of it and I did so, and he then went on to speak of the general and free use that was made in Paris of that water, and that he rarely ever sat down to breakfast without having a bottle of that water upon his table, and that he had been in the habit of using it very freely. 1581

Q. Was there anything about his appearance, his eye and his manner from that day after you saw him on the 11th, when there was this excitement?

A. No, sir, he was usually very calm.

Q. Nothing to indicate—

A. In the latter visits I paid to him.

*Re-cross examination by Mr. VAN PELT:*

Q. Did you ever see anything on the part of Mrs.

1582 Gates to justify these charges that Carlton made against her?

A. No, sir.

Q. That she was disregarding his comfort and interfering with his household?

A. No, sir.

Q. Did you ever see anything on her part but the utmost kindness and affection towards Carlton?

A. No, sir.

Q. Did you not know that Carlton was making statements that were entirely destitute of truth when he made these charges against his mother?

A. Well, I knew very little about their domestic affairs: I was not visiting at the house, I was in business in New York, and when I got home I usually stayed there.

Q. Did you not know that Mrs. Gates almost idolized her son?

A. I have always understood that Mrs. Gates did.

Q. And that her weakness was in showing too much affection for him?

1584 A. Yes.

Q. You are not able to specify a single fact or circumstance that would justify you in believing that there was any truth in the charges Carlton made against her?

A. I knew nothing of them.

Q. Suppose there was no truth in those charges, how would you account for his antipathy towards her?

A. If there was no truth in the charges that he made I should regard it as very peculiar that he should make such charges against his mother.

1585 Q. Would not you regard it as showing that he was under a delusion in regard to her?

A. Well, I should suppose there was something wrong in his mind.

Q. Toward his mother?

A. He had been either prejudiced, or there was something had come between them that had created a prejudice—bad feeling.

Q. And that he was not, having that feeling, in a proper condition of mind to consider her claims upon his bounty?

A. No. 1586

Q. Did Mrs. Gates have any charge of the household during your visit there?

A. No, sir, not to my knowledge.

Q. If Carlton had expressed a wish at any time to see his mother would you probably have known it?

A. I think I did on one occasion hear that he had spoken of his mother; I have been thinking of that matter since I have been under examination here, but I am not clear about it, I am not certain whether I heard that he expressed a wish to see his mother, or whether 1587 he had simply spoken of her; I know I heard something.

Q. Who did you hear that from?

A. Well, I am not positive in regard to that; I have been trying to fix the matter in my own mind, but I have not been able to do so—some one in the house.

Q. Do you not think it was singular that Carlton should die without expressing a wish to see his mother?

A. I think it remarkable that he should die without expressing a wish to see both father and mother. 1588

Q. So far as you know he did die without expressing a wish to see either of them?

A. I do not know that he did.

Q. You do not know whether he did or not?

A. I do not; I was not there until after his death—after Friday evening.

Q. Who did you say you heard this from—that he wanted to see his money?

A. I have just said I could not fix in my own mind who the person was—I think it was some one in the 1589 house.

Q. Who?

A. I could not say who it was.

Q. What did you reply to that?

A. I have no recollection of the conversation which passed in reference to it; the matter is not clear enough in my own mind to speak about it; I did not propose to introduce the matter at all, although the matter upon that point has been on my mind and I have endeavored to collect the facts sufficient to be positive about it.

1590 Q. Do you know that that feeling in reference to his mother resulted from the disease that he had ?

A. No, sir.

Q. What kind of a disease must he have had to have produced this antipathy towards his mother ?

A. I am not able to define that.

Q. Do you know of any other disease excepting insanity or monomania, that would account for it ?

A. Yes.

Q. What ?

1591 A. I should say that delirium and fever would produce an unnatural feeling.

Q. And as soon as the delirium and fever left him—if that was the cause of it—his feeling would return to its natural state—would it not ?

A. I suppose so.

Q. And his affection towards his mother would return ?

A. I should think so.

Q. What evidence have you now that the delirium and the fever did leave him, and that his feelings did return to

1592 their natural state towards his mother ?

A. I saw no evidence of delirium after the 11th ; I saw that he had on one or two occasions ; that his hand, in shaking hands with him, both when I went into the room and when I left him, that on two or three occasions they were quite hot indicating fever.

Q. Then after the time this delirium and fever left him, you said nothing and heard of nothing from him that showed that his feelings had changed towards his mother ?

A. I saw nothing but a general softening down of his  
1593 general deportment and manner towards others.

Q. Towards others, but not towards his mother, as she was not there ?

A. He said nothing about his mother.

Q. If he had returned to his natural state of mind, how would you account for his not having expressed a desire to see his mother before he died ?

A. Well, I do not know that I could account for it in other way than that he seemed very desirous of being quiet, and that he expressed his great desire to be quiet

until he could get well, and get strength sufficient to be 1594  
around to attend to matters himself.

Q. Seeing his mother—would that disturb his quiet?

A. I understood that he had expressed that feeling that her management in the house had annoyed him, and had excited him.

Q. Did he express any wish not to see you and any other friends that called, because it would disturb his quiet?

A. No.

Q. What difference was there between you and his 1595  
mother, that your seeing him would not disturb his quiet, and her seeing him would?

A. Well, I can only account for that from the feeling that had excited him at the time that he made the request that his mother should leave the house, I could not enter into the general idea and detail of his mind at the time.

Q. You cannot account for the feeling on his part that would prefer a stranger to his mother when he was about dying?

1596

A. Well, as I said before, I was surprised that there was no wish expressed.

Q (*By* Mr. LYON): Do you mean to say that of your own knowledge you knew of any of the circumstances in that household which showed that his statements in regard to his mother's interference with the servants were untrue?

A. No, sir.

Q. Do you know anything on that subject?

A. No, sir.

Q. Do you mean to be understood here as testifying 1597  
that those things which she stated were untrue to your knowledge?

A. No, sir.

Q. (*By* Mr. VAN PELT): Do you mean to be understood as saying that they were true?

A. I do not know.

Q. Or do you mean to be understood as saying you do not know whether they were true or not?

A. I do not know anything about it; I was not in the

1598 house ; all I knew about it was what I heard from persons  
in the house.

(Signed) LEVI P. ROSE.

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THOMAS O. FARRINGTON, being recalled as a witness in behalf of the will, and examined by Mr. LYON, testified as follows :

•Q. You have already explained the fact that you witnessed this will on the occasion of the 19th of August?

A. Yes, sir.

Q. From what you saw Dr. Gates do, and from all you heard him say upon that occasion, was there anything said or done by him which induced you to doubt the sanity of his mind?

A. There was not.

Q. You witnessed his will, believing from what you saw that he was competent to execute that paper?

A. I did ; if I had not thought so I should not have  
1600 witnessed it.

*Cross-examined by Mr. VAN PELT :*

Q. What is your business?

A. I am in the real estate business and an insurance broker.

Q. And have been a merchant?

A. Yes, sir.

Q. You are no doctor, I presume?

A. No, sir.

1601 Q. And have never made the subject of insanity a study?

A. No, sir.

Q. Are you acquainted with the forms of insanity?

A. I do not profess to be an expert, sir.

Q. If you had known that Carlton Gates was in the habit of choking his mother, kicking her, striking her, throwing knives at her, pouring pitchers of cold water over her, tearing the clothes from her, believing that she had poisoned him, threatening to shoot her, threatening

to have her sent to a lunatic asylum, charging her with 1602  
being insane, saying that he would have her tied up, and  
stripped and whipped, threatening to shoot her, and that  
he had driven her away from the house, how would you  
account for these peculiarities in his condition?

A. Well, I do not know that I should have been able  
to have judged of the matter unless I had seen or known  
some of the facts myself from hearsay.

A. Assuming these to be the facts I have stated, if you  
had seen them and heard them yourself, what conclusion  
would you arrive at as to his condition? 1603

A. Well, I should think he was either under the influ-  
ence of liquor, or that he was a very unnatural son.

Q. Well, suppose he was not under the influence of  
liquor?

A. Then I should think he was quite unnatural; I do  
not know that I should have made up my mind upon  
that, because I should have thought there might have  
been some other cause for him to treat her so.

Q. What cause would there be to justify it?

A. I do not think any cause would justify it. 1604

Q. Then what would you attribute that conduct to?

A. Well, I should think he was wicked or devilish to  
treat anybody so.

Q. Would you consider him in his right mind towards  
his mother?

A. I do not know that I should make up my mind to  
that, sir.

Q. Would you consider him in a condition of mind to  
consider her claims upon his testamentary bounty?

A. I should think not. 1605

Q. You would not have witnessed a will under these  
circumstances?

A. If I had known those facts.

Q. You did not know anything about them?

A. I did not.

Q. You had not the remotest idea of them?

A. I had heard of some acts I thought very unbecom-  
ing.

Q. At the time the will was executed?

1606 A. Sometime before that ; I had heard stories, but of course I did not believe them ; I thought they might be true, or they might not.

Q. You did not know whether they were true or false?

A. I did not.

Q. Do you know that Carlton might have had that delusion towards his mother in fact, at the same time that he talked as sensibly and rationally to you as he did in regard to making the will?

A. I suppose he might ; I do not know ; I am not expert enough to judge.

Q. Then the presence of that delusion was entirely consistent with his acts—with his intelligent act before you in making that will, or the act you say was intelligent?

[Mr. LYON objected, on the ground that the question was a professional question, and the witness had already stated that he was not a professional man ; objection overruled ; exception.]

1608 A. I do not think the question is very intelligent ; I cannot get at it ; I do not understand the question.

Q. Well, I will see if I cannot make it more intelligent?

A. If you please.

Q. Then the presence of this delusion, this antipathy towards his mother, was entirely consistent with all that you heard him say and saw him do when he made this will—when you say that he was in his right mind?

A. I do not think I have said——

1609 Q. Wait one moment and see if you understand that question?

A. That question assumes that there is this delusion.

Q. No, it don't.

Mr. LYON : It does, precisely.

*Witness* : It assumes that, and I cannot——

Q. Assuming that he had done these things towards his mother that I have stated?

A. That is a different thing. 1610

Q. Assuming that he had done those things, could he not still have done and said what you have described when he executed the will, when you say he was in his right mind?

A. The question is not clear to me now, sir; suppose you divide that question.

Q. Well, divide it yourself?

A. Well, my—I have said this, that I am not an expert; I saw nothing there that day that led me to believe that he was insane or under any delusion. 1611

Q. The subject of his mother was not mentioned, was it?

A. Not at all, in my presence.

Q. How do you know what his feeling towards his mother was?

A. I do not know.

Q. It might have been the feeling which has been described here?

A. It might have been.

Q. And, if it had been that feeling, would it not have 1612 been perfectly consistent with all he said and did when he executed his will—when, you say, he was in his right mind?

A. If this did exist, you want to know.

Q. If this feeling did exist?

A. Was his act consistent with what he done—is that what you want to get at.

Q. No, sir; could not he have said and done just what he did, having this feeling towards his mother?

A. Yes, sir; he could. 1613

Q. Now you understand it?

A. I understand so far.

Q. Now, if you had known that he had this feeling towards his mother, would you have considered him in his right mind, and able to make a will properly considering her claims?

A. I can conceive where a person might have got this feeling against another, when it did not exist, and yet be competent to make a will.

1614 Q. Would that person be competent properly to consider and estimate the claim of the person he had this antipathy against upon his bounty?

A. I think he might.

Q. If he believed his mother had poisoned him and was his worst enemy?

A. I have never heard he had any such belief.

Q. I have not asked you any such question; I asked you this: If he was under the delusion that his mother had poisoned him, would you think that would qualify  
1615 him to properly consider her claims upon his testamentary bounty?

A. You assume now that he was under this delusion, do you.

Q. If he believed his mother was trying to poison him?

A. Yes.

Q. Had been trying to poison him?

A. Yes.

Q. Would you think he was in a proper state of mind  
1616 to consider her claims upon his testamentary bounty?

A. Yes, if he had good reason to believe that.

Q. If he had no reason to believe it?

A. No; if he had no reason, he would not.

Q. What reason did he have to believe it?

A. I don't know anything about that.

Q. If he was under the delusion that his mother was trying to poison him, and without any ground to justify it?

1617 *The SURROGATE*: He has answered that question just as plainly as he could.

Q. And he might have had that delusion at the very time he said and did the things you say he said and did?

A. He might have had.

Q. The only time you saw Carlton was on the occasion that the will was executed?

A. The only time during his sickness.

Q. When had you seen him before ? 1618

A. I do not recollect ; probably, a month before.

Q. Did you have any talk with him ?

A. Yes, sir.

Q. To any extent ?

A. No, sir ; not very extensive.

Q. How long ?

A. Well, I met him on the boat and had some little conversation with him there, going to the city.

Q. About anything in particular ?

A. No, sir ; I don't recollect the subject exactly ; I 1619  
recollect conversing with him.

Q. Anything about his mother ?

A. No, sir.

Q. When before ?

A. I never heard him say a word about his mother in my life.

Q. When before did you have a talk with him ?

A. Two or three months before, possibly ; I met him casually, and passed the time of day.

Q. When before that ? 1620

A. I do not think I saw him before that, to have any conversation with him, for two or three years.

Q. Before he returned from Europe ?

A. Yes, sir.

Q. Do you know anything of your own knowledge to show that Mrs. Gates had treated Carlton with a want of affection or attention ?

A. Nothing at all ; I know nothing about it.

Q. Don't you know that she was entirely wrapped up in Carlton ? 1621

A. I don't know anything about it.

Q. You do not know anything about it ?

A. I do not know ; I always understood it was so, and supposed it was so naturally.

Q. You knew nothing to justify this antipathy ?

A. No, sir.

*Re-direct examination by Mr. LYON :*

Q. Suppose a patient laboring under a fever producing

1622 delirium should at that time talk about persons trying to poison him, and committing any other offence against him, and that the delusion should pass over—would the fact of the delusion which existed at that time, in your judgment, have any effect upon his subsequent capacity to make a will?

A. No, sir.

*Re-cross examined by Mr. VAN PELT:*

Q. Suppose he had the delusion that he had been  
1623 poisoned after the delirium left him, how would you account for that?

A. I should suppose the delirium was still on him.

Q. Suppose the delirium was not on him?

A. Then it would require an expert to determine it—it might require an expert to determine it.

Q. Suppose that the delirium was not on him—would not you think that it showed something wrong about his mind?

A. Something wrong, or some ill feeling from some  
1624 other ill treatment, I suppose.

Q. It would show something wrong in his mind, would not it?

A. It would show feeling some against that party for some cause; of course, I could not tell the why or wherefore.

Q. Would not it be consistent with the idea that he was laboring under an insane delusion?

A. I should think so.

(Signed) THOS. O. FARRINGTON.

1625

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WILLIAM RADFORD, being recalled as a witness, in behalf of the will, was examined by Mr. LYON, and testified as follows:

Q. You stated the circumstances which occurred at the time you witnessed this will?

A. Yes, sir.

Q. Which was on the 19th of August—you remember the fact?

A. Yes, sir.

1626

Q. Now sir, from all you saw that day on the part of Dr. Gates—from all he did and said—was there anything in his conduct or in his conversation to induce you to doubt the soundness of his mind?

A. I came to the conclusion he was of sound mind, and signed the will.

*Cross-examined by Mr. VAN PELT :*

Q. What is your business?

A. I have not any particular business but to eat, drink 1627 and sleep.

Q. When you had a business what was it?

A. I was a grocer—a merchant in New York City.

Q. You are not a doctor?

A. I am not.

Q. Have you ever made the subject of insanity a study?

A. I have not.

Q. Do you know the several forms of insanity?

A. I suppose there are several, but I do not know; I can't describe them, sir. 1628

Q. You do not profess to be an expert at all?

A. I do not.

Q. Supposing that Carlton Gates was in the habit of choking his mother—squeezing her face so as to force a tooth out—pouring pitchers of cold water upon her, tearing the clothes off her person; charging her with being insane, threatening to shoot her, charging her with having poisoned him, or wishing to poison him, and driving her from the house—on what principle would you account for such conduct? 1629

A. I am not an expert—I do not think I could answer that question correctly.

Q. Could he have been in that state of mind and feeling towards his mother, and at the same time talk and act in the manner he did at the time he executed this will?

A. Will the counsel state whether he has withdrawn the first question and asks this in the place of it.

Q. I took your answer and asked you another?

1680 (Question repeated).

A. Well, from all I know on the subject, and I cannot tell why I come to the conclusion exactly, but I do come to the conclusion that he might have done so.

Q. He might have had this antipathy towards his mother, and still have talked and acted as rationally as he executed the will?

A. I say I come to that conclusion; but if asked why, I could not give reasons for it perhaps; but that is my conclusion.

1681 Q. Did you ever talk with him on the subject of his mother?

A. Once.

Q. When was that?

A. That was the day before he signed the will.

Q. What feeling did he express towards her—what did he say?

A. Perhaps Mr. Van Pelt, if I should state to you some details of the conversation which I had with him, it would give you a more satisfactory answer; I will answer your

1682 question direct if you insist upon it.

Q. I wish you would tell us as fully as you remember it?

A. As you are aware I remained with Carlton Gates on Wednesday after the first will was read and corrected by Mr. Romer and himself; I then remained with Mr. Carlton Gates after Mr. Romer left the room.

Q. Now, will you tell me what was said?

A. I asked him some questions connected with his will, as he had then determined to make it; I asked him  
1683 why he had left his father's and mother's names out of the will, whether he thought it was consistent and right; he did not answer me directly; he seemed to be somewhat exhausted and laid down his head; he was resting it upon his arm, I standing at the foot of the bed; he soon revived and he replied in this way: he says, "The question" or "subject which you mentioned I think I fully understand, Mr. Radford," which I took to amount to just this—that he was not disposed to converse with me upon that subject; some other, some few questions

not of any moment—some conversation passed between 1634  
us, and I retired.

Q. You did not feel at liberty to pry into the matter?

A. Not beyond the first answer that I got; my object  
I think it is due to me I should explain why I done that  
—that I should be allowed to.

Q. You felt called upon to inquire the reason of this  
extraordinary omission?

A. I wanted to satisfy myself.

Q. And he furnished you with no satisfaction?

1635

Mr. LYON: You have got just what he said.

A. I gave you his answer.

Q. Did you renew the subject after that?

A. I did not.

Q. Did you ever talk with Mr. Hulbert on that sub-  
ject?

A. What subject do you allude to.

Q. Of the disposition of the property—taking it away  
from the mother?

1636

A. I think I may have done so; I have no distinct  
recollection now whether I did or not.

Q. Did he furnish you with any reason why it was  
done?

Mr. LYON: When was this—before the will was made.

Mr. VAN PELT: At any time.

Mr. LYON: I want to fix the time, if the witness proves  
any conversation was had before or after the will was 1637  
made.

A. I answer that question by saying I have no distinct  
recollection whether I conversed with him upon the  
subject or not, but I think I may have done so.

Q. Do you recollect whether he furnished you with a  
reason?

Mr. LYON: He has said he didn't recollect.

1638 A. I think I should correct myself upon reflection; that since the making of the will, since the death; I now think I have conversed with Doctor Hulbert upon one, two or three occasions upon the subject.

Q. And he did furnish you with the reason why Carlton had left them out?

A. I have not said so.

Q. Well, I ask you whether he did?

A. Ah! the general conversation I had with Dr. Hulbert was more in connection with settling this matter  
1639 than anything else between the parties, Mr. Van Pelt.

Q. Where was Doctor Hulbert when you had this interview with Carlton on the Wednesday?

A. I don't know; I supposed him to be in the house, but I do not know the fact.

Q. If you had known that Carlton had said and done the things, and had the feeling of antipathy towards his mother that I have stated as the basis of my former question, would you have considered that he was in a proper state of mind properly to consider his mother's  
1640 claims upon his testamentary bounty?

A. I suppose that I would have had some doubts, but what conclusion I would have arrived at I cannot answer.

Q. Would you have signed his will?

A. I cannot answer that question.

Q. Do you not know whether you would or not?

A. I am not prepared to say whether I would or not.

Q. I wish you would make up your mind?

A. I would like to please you, but I cannot go against  
1641 my own conscience.

Q. But if you had known that he had said and done these things towards his mother, and while in that state of mind towards her had left her out of his will entirely, would you have signed his will as a subscribing witness?

A. I give you the same answer as before.

Q. You won't swear that you would?

A. Or would not.

MARTHA GATES being recalled, and cross-examined by Mr. 1642  
LYON, testified as follows :

Q. Do you remember the little girl Elizabeth Murphy,  
that was a servant there?

A. Yes, sir.

Q. Do you remember the day of the month, or the day  
of the week, that you left the house during your son's  
last illness?

A. I left on Wednesday and then I did not return ; I  
left on Tuesday morning and returned again in the even-  
ing, and left on Wednesday again. 1643

Q. That was Wednesday of the week prior to his  
death?

A. Yes.

Q. When you returned on Wednesday, had this little  
girl left?

A. No ; I left her there at the house, I think ; I went  
away in the morning and left her.

Q. Did not she leave that day or the day before ?

A. She did not leave that day ; I went away at twelve  
o'clock on the Wednesday and left her there. 1644

(Signed) MARTHA GATES.

D. AMOS W. GATES being recalled and cross-examined  
by Mr. LYON, testified as follows :

Q. On the Wednesday evening after the funeral, do  
you remember of Mrs. Gates refusing to let Dr. Hulbert  
go into the library, or forbid him going into the library  
of the house? 1645

A. I do not know anything about it.

Q. You was not present, and do not know in any way  
of her having forbidden the doctor from going into the  
library?

A. Nothing, only what I have heard conversations  
about afterwards.

Q. Do you recollect coming into the dining-room and  
setting by Mrs. Gates and making a remark to her, and  
what that remark was, about her forbidding Dr. Hulbert  
to go into the library for a satchel or for anything else ?

1646 A. No.

Q. Or any other room of the house—do you recollect any conversation with Mrs. Gates characterizing her conduct in any way on that day, in regard to her forbidding Dr. Hulbert going into the library?

A. I do not remember.

Q. Did you not say that you had vainly persuaded, or attempted to persuade her to let Dr. Hulbert go into the library for his satchel?

A. I do not think I did, for I do not remember any  
1647 such circumstance.

Q. You did not say that to her?

A. I do not think I did.

Q. Did not you on that occasion, or some occasion, say that Mrs. Gates was a very peculiar woman.

A. I do not know; I may said of her that she was a very peculiar woman; I do not say I did.

Q. Did you never say to Dr. Hulbert that she was a very peculiar woman?

A. I have—likely I have.

1648 Q. Did you ever say to him that if he had any business with Mrs. Gates, you advised him to have as few words with her as possible?

A. I do not remember anything of that kind.

Q. Have you no recollection of that circumstance of Mrs. Gates refusing to let the doctor go into the library for his satchel at any time after your son's death?

A. No, sir; I have no recollection of it; if Mr. Hulbert had a satchel in the library and I knew it, and he was not allowed to go and get it, I think I should have  
1649 said so, but I do not remember anything of the kind; if it had occurred, I think I should remember something of it.

Q. Within the last year in speaking of Mrs. Gates to Dr. Hulbert on another occasion, did not you say to him that she was incapacitated for keeping house?

A. I do not remember it.

*Direct examination, by Mr. VAN PELT:*

Q. Who keeps house at the present time?

A. Mrs. Gates. 1650

Q. Is she incapacitated from keeping house ?

A. I think, since Carlton's death, she has kept house very well.

Q. Is she a good housekeeper in your judgment ?

A. Yes ; not perfect, but a good housekeeper.

(Signed) A. W. GATES.

On motion, adjourned to Thursday, December 30, 1869.

J. W. MILLS,

*Surrogate.* 1651

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1869, December 30th.—Met pursuant to adjournment, and on motion it is ordered that all further proceedings be and the same are hereby adjourned to the 6th day of January, 1870.

JOHN W. MILLS,

*Surrogate.*

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1652

1870, January 6th.—Met pursuant to adjournment, and on motion it is ordered that all further proceedings in this matter be and the same are hereby adjourned to the 13th day of January, 1870.

JOHN W. MILLS,

*Surrogate.*

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1870, January 13th.—Met pursuant to adjournment, and on motion it is ordered that all further proceedings in this matter be and the same are hereby adjourned to the 20th day of January, 1870. 1653

JOHN W. MILLS,

*Surrogate.*

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1870, January 20th.—Met pursuant to adjournment, and on motion it is ordered that all further proceedings

1654 in this matter be and the same are hereby adjourned to  
January 22d, 1870.

JOHN W. MILLS,  
*Surrogate.*

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1870, January 22d.—Met pursuant to adjournment.

Present—Mr. PRIME, for Executors.

Mr. VAN PELT and Mr. NORRIS, for Contestants.

1655 ROBERT NEVILLE, being sworn by the SUBROGATE as a  
witness in behalf of the executors, was examined by  
Mr. PRIME, and testified as follows :

Q. Where do you live ?

A. Yonkers.

Q. And your business ?

A. Livery stable keeper.

Q. Do you know the Reverend Doctor Hulbert ?

A. Yes, sir.

Q. Do you remember the occasion of Dr. Gates'  
1656 illness ?

A. Yes, I remember his sickness.

Q. Did you bring Mr. Hulbert back and forth between  
Yonkers and White Plains, during his sickness ?

A. Yes, I sent for him.

Q. How many times did you send him back and forth ?

A. [Referring to a memorandum on a slip of paper].  
Well, I sent for him I believe five times altogether.

Q. What was the first occasion ?

A. On the 11th of August.

1657 Q. Which way did you bring him then ?

A. Brought him with the team all the way from White  
Plains.

Q. How came you to send for him ?

A. I received a note through Madam Migy, who brought  
it to my stable, to send for Mr Hulbert.

Q. Who was the note from ?

A. That I can't say, who it was from; but it came from  
Doctor Gates' house ; Madam Migy brought it to me.

Q. That was on the 11th of August? 1658

A. Yes, sir.

Q. That was the first occasion on which you sent?

A. Yes.

*Cross-examined by Mr VAN PELT:*

Q. Where is that note which you received?

A. I destroyed it, sir, I did not preserve it at all.

Q. Did you receive any other note at any time?

A. No, I don't know as I did; the orders were brought by persons to the stable after that. 1659

Q. Who brought the orders?

A. Well, Madam Migy brought one or two of them; then there was a girl came once—once or twice.

Q. You say you brought Mr Hulbert over on the 11th of August?

A. Yes, sir, sent for him.

Q. When did you take him back?

A. [Referring to memorandum]. Did not take him back until the 20th.

Q. Where did you take him to then? 1660

A. To Bronxville.

Q. Did he come to your stable to be carried to Bronxville on the 20th, or did go to the Gates' house?

A. Yes, I think we went to Mr. Gates' house to get him, if I am not mistaken, I think so; I am not very certain, but I think we did; I think he left the order the night before, to send after him the next morning to take him to Bronxville.

Q. He left it in person at your stable?

A. Yes, sir. 1661

Q. On the nineteenth.

A. Yes, sir, on the evening before.

Y. About what time in the evening?

A. Let me see; it must have been 7 o'clock, I think—between seven and eight o'clock in the evening.

Q. Did you take him yourself?

A. No, sir, I sent him over, sent a man with him.

Q. Do you know whether he had any luggage?

A. Not as I know of; I don't know anything about that.

- 1662 Q. On what day did you bring him back again ?  
 A. Brought him back on the twenty-first.  
 Q. From White Plains ?  
 A. Yes, sir, I think so.  
 Q. When did you take him home again ?  
 A. I took him home I think on the twenty-second ; he went home ; he was taken back.  
 Q. Do you know whether you took him or whether you took somebody at his request ?  
 A. That I cannot say, Mr. Van Pelt, for I did not go  
 1663 with him, I sent the conveyance to take him.  
 Q. You do not know whether he was conveyed, or some other person that he designated ?  
 A. No, sir ; I don't.  
 Q. Are those all the trips that were made for him ?  
 A. No, sir ; there was a trip on the twenty-seventh, again.  
 Q. Who did you take then ?  
 A. That was taking Mr. Hulbert to Bronxville.  
 Q. On the twenty-seventh ?  
 1664 A. Yes, sir ; I think so.  
 Q. Was not that taking the witnesses to the will ?  
 A. Yes ; probably, it was on the twenty-seventh ; I believe it was taking the witnesses.  
 Q. When again did you take any witnesses ?  
 A. Witnesses were taken after that again ; I don't recollect the date—I did not put that date down.  
 Q. Look at that and tell me what it is [handing witness a bill] ?  
 A. Well, that was taking witnesses on September 13th  
 1665 —taking witnesses to Bronxville.  
 Q. What is that paper ?  
 A. This is a bill of the items, and times that he was sent for, and sent to.  
 Q. Made out by you ?  
 A. Yes, sir.  
 Q. And rendered to Mrs. Gates ?  
 A. Yes, sir.  
 Q. A bill against the estate ?  
 A. Yes, sir.

Q. Did you ever have any conversation with Mr. Hulbert in reference to what was going on at the Gates' house?

A. I did not.

Q. Do you recollect how you came to send to White Plains for Mr. Hulbert on the twenty-first, what direction you received?

A. It was a message from Doctor Gates' house.

Q. Announcing that Carlton Gates was dead?

A. He was not dead when he was sent for; he was very ill—very low, and they wanted Dr. Hulbert immediately.

Q. What time in the day was it?

A. It was in the afternoon.

Q. About what hour?

A. Well, I should think it was five o'clock, or very near it, before I got the order to go for him that evening—four o'clock, or somewhere in the afternoon; I am not very certain of the hour.

The bill was read in evidence, as follows:

YONKERS, November 2, 1869. 1668

Estate of Doctor CARLTON GATES, to ROBERT NEVILLE,  
Proprietor of the Broadway Livery Stables, North  
Broadway, Dr.

|           |                                      |         |               |      |
|-----------|--------------------------------------|---------|---------------|------|
| Aug. 11.  | Horse and wagon for Mr. Hulbert      | -       | \$5 00        |      |
| 20.       | Taking Mr. Hulbert to Bronxville     | -       | 2 00          |      |
| 21.       | Taking Mr. Hulbert from the Plains   |         | 5 00          |      |
| 22.       | " him home                           | - - - - | 5 00          |      |
| 27.       | Team, taking witnesses to Bronxville |         | 3 00          |      |
| "         | " bringing them back                 | - -     | 3 00          |      |
| Sept. 13. | Team to Bronxville,                  | - - -   | 3 00          | 1669 |
| "         | " bringing them back                 | - -     | 3 00          |      |
|           |                                      |         | <hr/> \$29 00 |      |

*Re-direct examination by Mr. PRIME:*

Q. You are sure that the eleventh was the first occasion of your taking Mr. Hulbert either way?

A. Yes, sir; that is the first time I sent for him.

1670 Q. And on that occasion you took him from White Plains to Yonkers?

A. Yes, sir.

(Signed) ROBERT NEVILLE.

On motion—adjourned to Thursday, January 27, 1870.

J. W. MILLS,

*Surrogate.*

January 27th, 1870.—The parties met pursuant to adjournment.

Present—The SURROGATE.

Mr. LYON and Mr. PRIME, counsel for proponents.

Mr. VAN PELT and Mr. NORRIS, counsel for contestants

WILLIAM ROMER resumed the stand, and his cross-examination was proceeded with by Mr. VAN PELT:

Q. Mr. Romer, did you have an interview with Doctor Hulbert, on the Sunday preceding Carlton's death, at any place, and, if so, state where?

1672 A. I saw the Doctor on the Sunday of young Shannon's funeral, which is the Sunday, I suppose, in the lecture room of the Reform Church.

Mr. LYON: Of Yonkers?

A. Yonkers.

Q. Was that before or after the funeral services in the Church?

A. It was afterwards.

1673 Q. Did you attend the funeral services in the church?

A. I did not.

Q. Where did you come from to have an interview with Doctor Hulbert on that day?

A. I drove from my home, at Pleasantville, to Yonkers and back again on that day.

Q. How long an interview did you have with Dr. Hulbert on that occasion?

A. I suppose it could not have been more than two minutes.

Q. What was the subject of your interview on that 1674 occasion?

A. It was with reference to the business connected with the drawing of the will.

Q. Did you immediately return to Pleasantville after the interview?

A. No, not immediately; I returned the same day.

Q. The same afternoon?

A. The same afternoon.

Q. Was that the object of your going to Yonkers on that day to see Mr. Hulbert? 1675

A. Not exclusively.

Q. Was it one of the objects?

A. I should not have come on that business if I had not had other business.

Q. What was the other business?

A. I had a motion at Special Term on Monday, and that was the day that my mother was buried, and I had to arrange to have that motion taken care of.

Q. And when you was down to Yonkers for that purpose you also took the opportunity to see Doctor Hulbert, 1676 at the lecture room, on the other subject?

A. I did.

Q. Will you state the substance of your interview, as nearly as you can recollect, with him, on the subject of the will at that time?

A. Simply that I had seen Mr. Mitchell personally.

Mr. LYON: You mean to say that you told him this?

A. I told Mr. Hulbert that I had seen Mr. Mitchell, 1677 personally, and I had arranged with him to transact my business during my absence.

Q. Was Mr. Mitchell to attend to this other motion also?

A. He was.

Q. And you did see Mr. Mitchell then?

A. I had seen him before I saw Mr. Hulbert.

Q. On that same day?

1678 A. On that same day.

Q. And you had spoken to him on both subjects, both to attend to the motion and drawing the will ?

A. I had.

Q. And then you returned home ?

A. I returned.

(Signed) WILLIAM ROMER.

JAMES B. SHERIDAN, being sworn by the SURROGATE, was  
1679 examined as a witness in behalf of the proponents,  
by Mr. LYON, and testified as follows :

Q. You have taken minutes of the testimony that has been given in this case ?

A. Yes, sir.

Q. Have you furnished Mr. Lyon, the counsel for the proponents, with copies of such minutes of testimony ?

A. Yes, sir.

Q. Are they correct copies ?

A. Yes, sir, I believe them to be so.

1680 Q. Jost look over and see if that mass of writing is the same papers that you furnished me ?

A. Yes, sir.

Q. Are the several parcels, from 1 to 19 inclusive, together with the three endorsed "Levi P. Rose," the copies furnished by you to Mr. Lyon ?

A. Yes, sir.

(Signed) JAS. B. SHERIDAN.

1681 Doctor D. TILDEN BROWN, being sworn by the SURROGATE, was examined as a witness in behalf of the proponents, by Mr. LYON, and testified as follows :

Q. What is your profession ?

A. I am a physician.

Q. What special branch of your profession have you given your attention to ?

A. I am a physician of the Bloomingdale Asylum for the Insane in the City of New York, and have been such seventeen years and more.

Q. And the study of mental diseases is that to which 1682  
you have specially devoted yourself?

A. Yes, sir.

Q. Will you look at the several copies of minutes of the testimony marked from one to nineteen, inclusive, and also the three parcels endorsed "Testimony of Levi P. Rose," and tell whether you have read the testimony contained in those parcels?

A. I have (witness examined the parcel handed to him); I have looked at the papers, and recognize them as papers that I have read. 1683

A. As the result of that testimony upon your mind, are you of the opinion that the evidence does or does not establish the insanity of Doctor Carlton Gates?

A. I am not satisfied that it does show Doctor Gates to have been insane—positively insane.

Q. In what way could these several acts of unfilial conduct, and other acts, which, in themselves unexplained—in what way can they be accounted for, other than upon the theory of his insanity?

A. They may be accounted for upon the assumption 1684  
that he was, at the time of such conduct, either laboring under the effect of nervous disease, delirium, or the effects of the use of intoxicating liquors to excess.

*Cross-examined by Mr. VAN PELT:*

Q. Doctor, there are various kinds and different degrees of insanity, are there not?

A. There are, sir.

Q. Will you please enumerate them?

A. The kinds of insanity and the degrees of insanity 1685  
are almost as numerous as the cases—the individual cases of insanity; it would be impossible to enumerate all the forms, unless a history were given of almost all the cases that had occurred.

Q. Will you please give us the most prominent and usual forms?

A. Forms, did I understand you.

Q. Yes, sir; and the terms by which they are known and understood among the profession?

1686 A. Different authors upon the subject of mental diseases have given different classifications of mental disease ; but those most prevalent divide into classifications—most generally adopted, divide mental disease into general or partial insanity—as the main divisions, and there are subordinate divisions, and different classifications are adopted by different writers.

Q. What is general insanity called ?

A. I think I used the term myself a moment ago.

Q. What is that called—dementia ?

1687 A. No ; it is called general insanity ; it implies a disturbance of mind upon almost all subjects.

Q. Upon all subjects ?

A. Yes.

Q. You call that general insanity ?

A. Yes.

Q. Is there such a species of insanity known as an insane delusion ?

A. Insane delusion, of course, necessarily indicates the existence of insanity—the assumption of insane delusion ;  
1688 it is not—the term insane delusion does not form one of the classifications of mental disease.

Q. It does not ?

A. It does not form—of course, it indicates the existence of insanity ; it assumes the existence of insanity—the term insane delusion.

Q. What is an insane delusion ?

A. An insane delusion is the belief in something, or some relation of things, which has no existence, save in the diseased imagination of the patient—of the person  
1689 holding it.

Q. It is an insane delusion, recognized as a test of insanity ?

A. It is.

Q. Is it considered a high test ?

A. It is.

Q. In what forms are insane delusions frequently exhibited ?

A. In the forms of belief—unreasonable beliefs of all kinds—unreasonable and unnatural beliefs ; I may say,

that are founded upon a diseased condition of the mind ; 1690  
it may be extended to an indefinite and infinite variety  
of subjects.

Q. Would the belief on the part of a person that  
he had been poisoned, without any grounds to justify  
that belief, be an indication of the existence of an insane  
delusion ?

A. Not necessarily.

Q. To what other cause would you refer that ?

A. It might be merely a mistake of judgment upon the  
part of the individual ; it might be a delusion, and yet 1691  
not necessarily an insane delusion.

Q. Would it be consistent with the presence of an  
insane delusion ?

A. It would.

Q. Suppose the individual should entertain the belief  
that he had been poisoned by his near relatives, without  
any ground for that belief, or even suspicion—to what  
would you impute that ?

A. Without any ground, in his own judgment or in the  
judgment of other people. 1692

Q. Yes, sir ; in his own judgment ?

A. Well, no person would be likely—even an insane  
person would not be likely to have such an opinion,  
unless he had grounds in his own judgment.

Q. Suppose the ground was imaginary ?

A. An insane person might.

Q. But with the belief that it was founded upon  
sufficient ground ?

A. Such person might be insane, or might not be.

Q. Under what circumstances might he not be ? 1693

A. If there had been previous circumstances which, in  
his own judgment, justified such a conclusion, upon his  
own reasoning, he might not necessarily be insane ; it is  
not a very uncommon occurrence for persons to have  
supposed themselves to be poisoned by taking medicines  
administered to them by physicians—sometimes thinking  
it to have been done by mistake on the part of the  
physician or on the part of the druggist, and at other  
times thinking that the medicine was itself—although

1694 administered with the belief on the part of the physician that it was appropriate to the case—was otherwise, and had acted as a poisonous substance.

Q. Are not persons inflicted with insane delusions very apt to imagine that they have been poisoned?

A. No, sir; I do not think they are very apt to; some do; but by the term "very apt," I should suppose you meant very generally.

Q. Is it not a very general form of delusion?

A. No, it is not general, it is frequent.

1695 Q. On the part of persons who are partially insane?

A. It is not infrequent, but I cannot say it is a general delusion; it is a very frequent delusion; as compared with the whole number of insane persons I do not think that delusion is held generally.

Q. Did you discover, in reading the testimony, that Carlton Gates had a suspicion that his mother was trying to poison him?

A. I saw that it was stated so by one of the witnesses—a child.

1696 Q. Assuming that testimony to be true, on what ground would you reconcile that belief on the part of Carlton Gates, consistent with the idea of his perfect sanity?

A. Assuming the idea that the testimony of that witness was true at that time I infer, of course, you mean.

Q. Yes, sir?

A. Well, I am obliged to believe that—taking that, founding my opinion upon that testimony, the evidence of that witness—that Doctor Gates was at that time in a condition of delirium from nervous disease, not only  
1697 from the testimony of that individual witness but from the corroborative evidence of other witnesses and not in a condition which I understand as that implied by the term insanity.

Q. Would it be satisfactorily accounted for on the supposition that he was then laboring under an insane delusion?

A. It might have arisen—it might have been an insane delusion; that idea of itself might be an insane delusion in his mind, or any other person's mind, but, as I have said before, it might not be.

Q. If that suspicion had been the result of his delirium 1698 and the nervous excitement that he was then in, when that excitement and delirium passed over, then this suspicion would also have vanished, would it not?

A. That his mother had poisoned him.

Q. Yes, sir?

A. It probably would, and as far as I understand the evidence it apparently did.

Q. Did you discover in any part of the case any evidence showing that his feeling towards his mother changed after that time?

1699

A. I do; yes.

Q. Where?

A. Dr. Arnold testifies that he knew in the latter part of his illness that his mother was in the house, and that it produced no disorder with him, no agitation of mind or emotion on his part, and he did not allude to any such apprehension or suspicion in relation to his mother.

Q. Did you discover that Carlton Gates had an antipathy towards his mother before the time that was fixed by the girl in her testimony, and that that antipathy continued down to the time of his death?

A. I observed from the whole evidence that he was subject to a very variable feeling towards his mother, at times, a feeling of estrangement, and, perhaps, aversion; I do not know how strongly you mean to use the term "antipathy;" there seems to have been no such feeling towards his mother as would justify the affirmation of a continuous feeling of antipathy, because Mrs. Gates herself and several of the witnesses testify that he was sometimes exceedingly kind in his feeling—in his treatment of his mother, and he required that the utmost deference should be paid to her comfort and feelings by other persons.

Q. Did you discover that that was his feeling towards her down to the time of his death?

A. It was to some intent manifested in his last illness; his servants testify that he desired she should have everything provided for her comfort while she was in the house, but that he wished her to leave the house.

1702 Q. Did you discover from the testimony that he drove her from the premises, and threatened that if she ever put her foot on the premises again that he would shoot her?

A. Mrs. Gates says he did threaten that.

Q. Did you discover that?

A. I discovered that, yes, sir; that occurred during his last illness, in the early part of his last illness, while Doctor Arnold and Doctor Wood say that he was delirious.

Q. Assuming that to be true, how do you account for 1703 that conduct on his part?

A. It may be accounted for by the supposition that Doctor Arnold and Doctor Wood were correct; that he was laboring under delirium of mind—mental delirium, and that it was a transient condition of mental aberration that may have passed away, and which they say did pass away.

Q. Could it also be satisfactorily accounted for by the assumption that he was laboring under an insane delusion?

1704 A. If the other evidence as to his condition prior to this attack of delirium justifies the supposition it might, but it could not to the satisfaction of an expert in insanity merely upon the evidence relating to the time of that last illness from the 9th of August to the 19th.

Q. Speaking of that circumstance, as standing alone, his driving his mother away from the premises and threatening to shoot her if she ever returned, could you satisfactorily account for that conduct on the supposition that he was laboring under an insane delusion?

1705 A. I cannot in this particular case; as an abstract question there would be a doubt on my mind, but taking all the circumstances together, the evidence—as I was bound to—I could not satisfy myself that it arose from an insane delusion.

Q. What other circumstance or cause would justify him in doing that, provided he was sane?

A. That is going, it seems to me, beyond the facts presented to me upon which I am bound to form a professional opinion; I do not know that I am prepared to say

that anything would justify a son in expelling his mother 1706  
from the house if he was sane.

Q. I understood you to attribute that to his delirium and to his nervous excitement, now leaving those causes out, I ask you whether it could be satisfactorily accounted for on the idea that he was laboring under an insane delusion?

A. Well, it seems to me that your question cannot be answered; I certainly cannot answer such a question; I have to take things as they are presented; I could suppose a great many things, but I would not venture to give 1707  
an opinion upon it.

Q. I understood you to state upon your direct examination your wholesale conclusion, that taking all the facts together you did not think you could say that he was insane?

A. That is so as I remember.

Q. I now ask you to furnish the reasons why you came to that conclusion?

A. The reasons are in brief, that the evidence is not conclusive in my judgment as showing the existence of 1708  
insanity; that there are not reasons enough for me to suppose that he was insane—won't you repeat the preceding question.

Q. I understand you to attribute that to his delirium and to his nervous excitement, now leaving these causes out, I ask you whether it could be satisfactorily accounted for on the idea that he was laboring under an insane delusion?

Mr. LYON: You mean that if at that time he was not 1709  
laboring under any delirium or any disease.

Mr. VAN PELT: I think the question is perfectly plain.

Q. Leaving out of the case entirely the delirium and this nervous excitement, I ask you whether that conduct of Carlton towards his mother, in driving her away from the house and threatening to shoot her if she returned again, could be satisfactorily accounted for on the idea that he was laboring under an insane delusion?

1710 A. Yes, it might ; but it might also be——

Q. That is an answer to the question ?

A. No, sir ; I beg your pardon, it is not an answer ; I am allowed to give my own answer.

Q. I only asked——

A. Yes, sir ; but you did not have the whole answer ; if you insist upon having that as a full answer, I shall ask to recall it and put it in another form :

The SURROGATE : He is entitled to finish his answer.

1711 Mr. VAN PELT : Let us have it then.

A. The answer of the witness was read to him: "Yes, it might, but it might also be"—I recall that ; "it might also be ;" it might in another person and under other circumstances, and it might also be accounted for by the supposition that the person was at the time laboring under the effects of the use of alcoholic stimulants ; but in this particular case, in view of what the testimony shows, did exist at that time ; I cannot assume that it might have been caused by insane delusions as I understand that term.

1712

Q. If it had been caused in this case by the delirium, or by his nervous excitement, or by his being under the influence of alcoholic stimulants, would not that conduct change when those causes disappeared ?

A. It probably would.

Q. Where do you discover in the testimony in this case, that his conduct did change towards his mother  
1713 after that time ?

A. After his requiring her to leave the house.

Q. Yes, sir ?

A. Why, it is evident that there was no opportunity for the manifestation of similar conduct, from the fact that she left the house and did not see him again during his life, although she states that she did return to the house, and Dr. Arnold states that Dr. Gates told him that he knew that she was in the house, and yet manifested no antipathy, aversion, or unkindness towards her.

Q. Did you discover in Dr. Arnold's testimony that 1714  
Carlton Gates never referred to his mother to him again  
after he told him that she had left the house?

A. I have just said that my impression is that he  
states that he did tell him that he knew she had been in  
the house; of course I do not remember the other thing,  
but if he said it, the two would be inconsistent with each  
other.

Q. If Carlton had been in a sane and natural state of  
mind, would he not naturally have desired to see his  
mother before he died? 1715

A. That is a matter of opinion, which it seems to me  
an expert in insanity, as the phrase is, cannot give any  
more satisfactory judgment upon than other persons.

Q. Would it in your judgment as an expert, be con-  
sistent with the presence of an insane delusion, that he  
should die without wishing to see his mother—would it  
be consistent with the existence of an insane delusion  
that he should die without wishing to see his mother?

A. It would undoubtedly.

Q. If his mother had always treated him with the utmost 1716  
kindness, and had indulged every wish he expressed  
what sufficient cause did you discover in the testimony  
for his antipathy towards his mother.

A. Is that question based upon the assumption that  
the evidence shows that she did always treat him with  
the utmost kindness, and that there was not in his opin-  
ion any ground for believing her to be otherwise than  
kind?

Q. Yes, that is assuming that she always treated him  
with the utmost kindness and affection, assuming that 1717  
fact to be proved in this case?

A. And that he believed that she did so.

Q. No—just wait one moment—what sufficient cause  
did you discover in the testimony for his feeling this an-  
tipathy towards her?

A. Antipathy is the term which we differed upon a little  
while ago; as I understand that term, I do not perceive  
that there is evidence that there was a permanent antip-  
athy towards his mother.

1718 Q. What do you understand by the term antipathy?

A. A permanently hostile feeling towards another person.

Q. Did you not discover that he had a permanent hostile feeling towards his mother?

A. I did not.

Q. And in making up your mind that the testimony does not show that he was insane, you assume that he had no antipathy towards his mother?

A. I read in the evidence that he was subject to very variable feelings in regard to his mother, and that feeling was at times manifested by conduct which certainly must be called unfilial and unkind.

Q. In making up your mind that the testimony does not show that he was insane, you assume that he had no antipathy towards his mother?

A. Well—well I think I have answered that question; I cannot assume what is in conflict with the evidence.

Q. And do you assume as the result of the evidence that he had no antipathy towards his mother?

1720 A. No antipathy, as I understand the term, meaning thereby a permanent hostile feeling towards his mother.

Q. Suppose he was in the habit of pouring pitchers of cold water upon his mother, tearing the clothes from her person, squeezing her face so as to force a tooth out of her jaw, kicking her, striking her, threatening to have her tied up and stripped and flogged, driving her away from the premises, and threatening to shoot her if she put her foot upon the premises again; and after such treatment for weeks, he should die without expressing a wish ever to see her again—would you consider that these facts would show that he had an antipathy towards his her?

A. I think it would show that he had a strong feeling of anger against her at the time of the occurrence of these various acts that you specify, and assuming your position that he died without expressing regret for it or a desire to see her.

Q. Would all these things be consistent with the idea of his having an antipathy towards her in the sense in which you understand the term?

A. Not necessarily I think, because there may have been a period of time ; you have given no period of time in your preceding question, over which these various acts might have occurred, and these may have been an infinite number of intervals during which he manifested an entirely different state of conduct, as is testified to in the evidence.

Q. I ask you now to designate the evidence in this cause, showing that he had acted in a different manner towards his mother ?

A. His mother states that he did herself ; she states herself that he did. 1722

Q. Produce the testimony and point it out ?

A. Mrs. Nesbit says the same thing.

Mr. LYON objected to the question.

Q. Doctor, do you mean to say that you discovered testimony in this case ; I will not ask you to point it out, showing that Carlton expressed any kindness or affection towards his mother since the month of April last ? 1724

A. I do.

Q. Where do you find that ?

A. Mrs. Palmer speaks of it, particularly ; his mother speaks of it, Dr. Wood speaks of it, the nurse, Hester White speaks of it, Mrs. Nesbit speaks of it—these persons, I venture to say—all speak of it.

Q. What was the kindness he expressed ?

A. Hester White—I do not know what her status is otherwise, intellectually, but as a nurse—she says that when he was himself, as she calls it, he was habitually kind to his mother ; that he consulted her as to matters about the house ; that he wished her to give him his medicine ; that he asked her opinion about the position of the furniture, pictures, &c.—all of which indicate kind treatment. 1725

Q. Since April that is ?

A. The exact point of time to which Hester White's testimony refers I cannot now say, but Mrs. Palmer, who was house-keeper from the middle of April—the 19th of

- 1726 April to the 22d of June—two months and over—speaks of his kindness towards his mother, and of his requirement that she should be treated with the utmost difference and respect, and her every comfort should be cared for. Margaret Fitzpatrick, who was one of the servants during that last illness, says, that he wished his mother to have everything prepared for her that she desired, although it was at the very time he was angry with her on account of the ice being locked up, and at the time he directed her to leave the house, and Dr. Woods
- 1727 goes at length into the matter and gives Dr. Gates' reasons for thinking his mother of unsound mind, and yet manifesting a very proper and filial sentiment towards her in general terms, and the mother says that when he was himself, to use her own term, when he was natural, no one could be kinder.

Q. Now, you fix all these facts as occurring since April last—do you?

- A. I cannot say that they all occurred since that time; the mother's testimony does not appear to refer to any
- 1728 special time; it is very general terms.

Q. Did not you discover from the testimony that in former years he was very kind to her, and that since his return from Europe in November, 1868, his feeling towards his mother changed?

A. I remember his mother, aunt and cousin speaking of that.

Q. And that his feeling became so intense against her towards the latter part of his life, that he said and did the things I have mentioned to you?

- 1729 A. Well, that question assumes that the change towards her was a continuous one, and that it arose—and that his conduct arose from this change of feeling, but I cannot admit that that is shown by the evidence, for it may have arisen, as I have said, from other causes.

Q. Did you not discern that his feeling grew worse towards her the longer he lived?

A. I did not, not as an habitual thing that it grew continuously worse.

Q. What single act of kindness or affection did you

discern in the evidence of his showing to his mother 1730 within one month before he died ?

A. I do not know that there is any special, specific act testified to, that tends to show that, except those that I have already mentioned, his directions to the house-keeper and to the servants, that her wants should be provided for, and that she should have all that she desired.

Q. What, in the house ?

A. In the house.

Q. Did not you discern that he had expelled her from 1731 the premises, and that she was obliged to go under the threat of being shot ?

A. In August.

Q. Within one month of when he died ?

A. Prior to his sickness in August.

Q. Say one month before he died, did not you discover that he had driven her from the house and had threatened to shoot her if she returned ?

A. Mrs. Gates says that he threatened to shoot her if she did not leave the house and remain until November, 1732 but she does not say when he made that threat.

Q. Did not you discover that she had left the house in consequence of his threats and treatment ?

A. I discovered that she left the house in August ; I remember that Doctor Upham says he wished her to leave the house in March, but I do not remember that it is stated that she left the house at that time.

Q. From the time she left the house in August, under his directions and threat, what act of kindness did you discover in the case on his part towards her after that 1733 time ?

A. Why, she left the house on the 11th, and he died on the 19th.

Q. Very well, put your finger on the first fact that this case discloses—that he had changed his feeling towards his mother since he drove her from the house ?

A. I do not think there is any evidence bearing upon that point except that which Doctor Arnold presents when he says that Doctor Gates told him that he knew

1734 his mother was in the house and that he did not speak unkindly of her, manifested no unfriendly feeling towards her.

Q. Do you call that an act of kindness and affection?

A. I do not say that it was; you ask me to specify any act of kindness; I say I do not remember of any testimony directly bearing upon that point except this; it may be regarded as negative entirely.

Q. I ask you now whether you regard the circumstance of his knowing that his mother was in the house and not  
1735 expressing any antipathy towards her as an act of kindness on his part?

A. By no means.

Q. Now, I ask you to designate a single fact in this case that transpired after he had then driven his mother from the house to show that his feeling changed towards her, or that he felt any kindness or affection towards her?

A. Well, in answer to the first clause of your question, any indication of his feeling having changed, what I  
1736 have already cited I think may be assumed as some evidence that his feeling had changed towards her; in regard to the second clause, as regards any specific act of kindness, there is none that I know of to present.

Q. He had threatened to shoot her if she returned to the house when he sent her away on the 11th of August, or early in August, you discovered that?

A. So Mrs. Gates says.

Q. Did you discover from the testimony of Doctor Arnold that when Carlton knew afterwards that she was  
1737 in the house that Carlton was in bed and unable to leave it?

A. Yes.

Q. Did you discover that he was unable to execute his threat to get up and shoot her because he was confined to his bed?

A. I remember that he was confined to his bed; I suppose he was not able to get up about the house.

Q. Did you discover any words that Carlton said when Dr. Arnold told him, or swore that Carlton knew that his mother was in the house?

A. I do not remember that Dr. Arnold quotes any expressions of his ; I do not think that he does quote any of his language—Dr. Gates' language—except to this effect that he says the doctor told him he knew his mother was in the house, but it did not trouble him. 1738

Q. Did he say that Dr. Gates said it did not trouble him—did not he say that it did not appear to trouble him?

A. My impression is that the doctor said that Dr. Gates said it did not trouble him.

Q. Now, will your answer the balance of the question, 1739 and state what acts of kindness or affection Carlton showed towards his mother after he had driven his mother from the house in August?

A. I have already answered that, and said that so far as the evidence goes I could recall no indication of kindness.

Q. Was it not then fair and logical to assume that this same feeling of anger and hostility that he had expressed so many times and so long before, continued down to the last? 1740

A. No ; because as I have already said, Dr. Arnold says that Dr. Gates told him that he was aware that his mother was in the house, and yet that he was not disturbed by the fact ; that is, as I have already said, some indication that there had been a subsidence of the aversion, the antipathy, or the hostility, whatever it might be called.

Q. Do you think that circumstance showed that he had returned to his natural mind, and had the proper affection for his mother? 1741

A. I really do not know ; I would not like to say that he had a proper affection for his mother.

Q. Might he not still have had the same antipathy to towards his mother that he had before?

A. He might, undoubtedly.

Q. And the only circumstance : from which you infer that antipathy had left him, were that he did not get into a rage and get up and shoot her, when he knew that she was in the house?

1742 A. Well, I do not say that he had what I call an antipathy towards his mother ; you see you are continually running against a stone wall on that unfortunate word.

Q. The circumstances that I have called your attention to in detail, do they not show an antipathy?

A. I have already said that I do not consider it as showing an antipathy—a permanent antipathy.

Q. Are they not consistent with the idea of the existence of the antipathy?

A. These acts in the abstract undoubtedly are consistent with the idea, and if it could be shown that that was the habitual and uninterrupted current of feeling and action on the part of a son towards a mother, no reasonable person could justify—could question the fact that they would show an antipathy.

Q. Suppose that he treated her in that manner when he was not under the influence of liquor, and when he was not in state of delirium from fever or disease of the body, how would you account for that conduct?

A. I think it would be showing either a very wicked heart or an insane mind.

Q. Wouldn't it be entirely consistent——

A. With either.

Q. With the idea that he was laboring under an insane delusion with regard to his mother?

A. It would ; and also with the supposition that he was a very bad and wicked man ; and also with the supposition that he may have been a person indulging, either habitually or occasionally, in the use of stimulants, which had produced an entire change of feeling and conduct towards his parents and other persons.

Q. When he was in that state of mind and feeling towards his mother, from whatever cause it may have originated, would you have considered him in a proper state of mind properly to estimate his mother's claims upon his testamentary bounty?

A. Well, *a priori*, not ; but that—it would depend upon more facts than you have supposed—assumed now ; please repeat the question.

(Question repeated.)

*Witness* : Which state of mind do you mean ? 1746

Q. Whatever you call it—antipathy, anger, excitement—whatever you call it ; but when he did the things I have specified towards his mother, whether you consider that he was in a proper state of mind to consider her claims upon his bounty ?

A. During the existence of the feeling that prompted these acts, I should say that he was not.

Q. And if that same feeling existed in his mind that prompted these acts when he made this will, that therefore he was not then, when he made the will, in a proper 1747 condition to consider her claims upon his bounty ?

A. Well, I am unable to answer that question without knowing what the state of feeling was in which he made the will ; if you mean, if he was in a reasonable, natural and healthy state of mind, or could act with an untrammelled judgment at the time of this conduct which you have been specifying, I should say not.

Q. Now the question is this : If he was in the same state of mind towards his mother when he made this will that he was when he did these acts of violence 1748 against her, was he in a proper condition to consider her claims upon his bounty ?

A. Well, I should say not—that he was not.

Q. Are all the acts that I have enumerated of violence and unnatural conduct on his part towards his mother consistent with the idea that he was laboring under an insane delusion with regard to her ?

A. I think they are ; taken apart, by themselves, they are so.

Q. If they were not caused by the use of alcoholic 1749 stimulants and by his fever, would you be able to draw any other inference from those facts than that he was laboring under an insane delusion ?

A. Yes ; because he might be a man of violent and extravagant temper, and might, upon the return of calmness to his mind, regret them very sincerely, and express his regret and repentance to his mother.

Q. If they were caused, then, by his being such a man of anger, when he did return to his senses he would express his regret to his mother, would he not ?

1750 A. That would depend somewhat upon his natural temperament, which seems to have been a peculiar one; but, under ordinary circumstances, most men would so express their regret and repentance.

Q. When he knew that he must die, and had made his last will and testament in view of his approaching death, and when his mother had always treated him with kindness throughout his whole life, in what way do you explain his omission in not desiring to see his mother before he died?

1751 A. His natural feeling—the natural feeling of a son may have been diminished—may have been deadened somewhat by the effect of sickness, by his physical condition, and the effects upon his nervous system, upon his sentiments and emotions; that may account for it.

Q. And if his natural feeling then had diminished to such an extent as that, would you consider him in a proper condition properly to consider his mother's claims upon his bounty?

A. We are able to form a judgment upon that by his  
1752 own declarations.

Q. Taking my question as the basis of the facts?

A. Well, I cannot confine myself to that.

Q. I am taking your preceding answer as the basis of my question; accepting that as a solution of his conduct, would not you think that those same causes would disqualify him from properly considering his mother's claims upon his bounty?

A. Not necessarily; because his intellectual faculties are shown to have been directed to that subject—that he  
1753 considered it; and we have direct evidence as to what the state of his intellect and reasoning on that subject was.

Q. If he had had the idea that his mother, instead of being his best friend, was his worst enemy—that she was a base and vicious woman—that she was insane; and he was laboring under those impressions at the time he made his will, when there were no sufficient grounds for such a belief; would you consider that he was in a proper state of mind to consider her claims upon his bounty?

A. No, I think not ; if he was an insane man, and his insanity consisted in insane delusions with respect to his mother, of course, I do not think he was in a proper state of mind to appreciate correctly her claims upon his affection and bounty.

Q. Did you discover from the testimony you read that he believed his mother was insane ?

A. I did discover that.

Q. Did you discover any evidence to show that she was insane ?

A. I think there was evidence which would—which might have satisfied him and others that her eccentricities in some directions were such as to cause the belief that they overpassed the limit of eccentricity.

Q. Eccentricity is not insanity, is it ?

A. No, sir.

Q. You discovered that Carlton was an educated medical man ?

A. Yes, sir.

Q. You believed that when he used the term insanity, he knew what it meant, did not you ? 1756

A. Yes ; I presume he did.

Q. And when he thought and said that his mother was insane, that he believed that she was insane ?

A. I have no reason to doubt it.

Q. Now, I ask you what evidence you discovered in this case to justify, for one moment, the belief in his mind, or in the mind of any other reasonable person, that his mother was insane ?

A. Well, my attention was not directed to that subject of inquiry. 1757

Q. Now, then, how do you account for his belief that his mother was insane ?

A. Oh, I do not pretend to account for his various beliefs.

Q. What, sir ?

A. I have not attempted in my own mind to account for his various beliefs, except on the subject in relation to this direct question—the main question.

Q. Is it a common form or common expression of in-

1758 sanity for insane persons to believe that other persons are insane?

A. It is not uncommon.

Q. Who are really sane?

A. It is not uncommon.

Q. Is not it a very common form of insanity for persons who are afflicted with insanity to believe that they are sane, but that other persons are insane?

A. Well, it is common—it is not, perhaps, very common for them to believe that other persons are insane;  
1759 it is very common for them to believe that they are sane themselves.

Q. Then, if Carlton believed that his mother was insane that would also be an evidence of insanity in this case against him?

A. Not necessarily.

Q. Suppose he believed it without sufficient grounds, or any grounds?

A. The corollary of that assumption would be that I might be insane because I did not necessarily see that  
1760 Doctor Gates was insane.

Q. No; you do not charge him with being insane; understand the question?

A. I understand you that his belief that his mother was insane was presumptive evidence that he was insane himself, if I understand your question.

Q. Well, is it not consistent with the theory that he was insane?

A. Oh, yes; certainly.

A. And would not it be more consistent with that  
1761 theory, than that he was under the influence of intoxicating liquors?

A. No; I think not.

Q. Well, if he had that belief that his mother was insane, when he was really sober himself, and when he was not under delirium, then how would you account for it?

A. Well, we are all aware that there is great diversity of opinion in different minds in almost every case of suspected or alleged insanity.

Q. Well, under these circumstances?

A. I shall not attempt to account for it ; if you ask me 1762  
how I would account for it, I must decline to account for  
it except with the fact that persons do differ, and are at  
liberty to differ upon a supposed question of mental dis-  
ease, and it does not necessarily imply any lack of judg-  
ment or aberration of judgment on their part. .

Q. Do you mean to say that you cannot answer that  
question ; that you are unable to account for his belief  
that his mother was insane under those circumstances ?

A. Is that the same question you propounded before—  
we have got into a sort of desultory conversation on this 1763  
subject.

Q. I will put another question : Suppose that Carlton  
entertained the belief that his mother was insane when  
he himself was not under the influence of alcoholic stim-  
ulants or delirium, how would you account for that belief  
on his part ?

A. By the fact that she might have been insane, or  
that it might have been an error of judgment on his part.

Q. Do you so account for that belief on his part ?

A. I do not account for it because I have not directed 1764  
my attention to the consideration of the subject whether  
she was so or was not so ; whether he was justified in his  
opinion, or whether it was an error of judgment on his  
part.

Q. When all these other symptoms and indicia of in-  
sanity are present, would it not be much more natural  
and logical, and reasonable, to account for this belief that  
his mother was insane, on his part, on the ground that  
he was insane ?

A. Well, as I do not discover what I regard as an in- 1765  
dicia of insanity in the case, I cannot see the propriety of  
regarding this opinion on his part as necessarily corrob-  
orative of any such indicia.

Q. Have not I understood you to say that all the cir-  
cumstances that I have enumerated of delusion and un-  
natural conduct on his part toward his mother could be  
accounted for on the ground that he was insane ?

A. I have said so ; but I have also said that taking the  
whole case together I did not reach the conclusion that

1766 they show the existence of insanity on the part of Doctor Gates.

Q. I do not want your conclusions ?

A. The parts must be consistent with the whole.

Q. That is what I want to bring about ?

A. One thing must be weighed with another, and not considered solely in its abstract force or significance.

Q. To what do you attribute, under the circumstances of this case, Carlton's belief that his mother was insane ?

A. I have already said that I had formed no judgment  
1767 on that point.

Q. And I understand you to say that that belief—

A. I also said that she might have been insane for aught I know ; the evidence does not go into that at length, there is not sufficient basis for judgment.

Q. And I understand you to say that such belief on his part without any ground to justify it, would be consistent with the idea of his being insane ?

A. Certainly, without any ground to justify it would be consistent with the idea that he was insane.

1768 Q. Did you discover, on reading over this testimony, that Carlton was drinking hot water in large quantities to take the coating off of his stomach ?

A. I remember something about that ; I do not remember as to what was said as to the quantity of the water, or the temperature of the water, specifically.

Q. Did you ever know of the drinking of hot water being prescribed by a physician to a patient to take the coating off the stomach ?

A. You must remember that such expressions came  
1769 through another medium.

Q. I do not want you to get into a desultory conversation ?

A. The probability is that the Doctor never talked about the coating on his stomach, and he never used such words, but that the person to whom he did talk may have used that expression as his own language to convey his thought.

Q. Do not embarrass our case by going out of your province as a witness ; I asked you whether you discov-

ered testimony in the case that Carlton said that he had 1770  
been drinking hot water to take the coating off his  
stomach?

A. Well, is that an expression of your own—"coating  
off the stomach"—or is it somebody else's.

Q. Yes, coating off his stomach, like the wall of a  
ceiling?

A. Well, I do remember something said of that kind.

Q. I ask you when in the history of your experience  
as a physician did you ever hear of such a remedy as  
that being prescribed by a physician? 1771

A. What, warm water.

Q. Yes?

A. Certainly I have.

Q. Large quantities of warm water to take the coating  
off the stomach?

A. No, but I have heard of warm fluid drinks being  
prescribed in large quantities.

Q. For the purpose of taking the coating off the  
stomach?

A. No, sir, of course not. 1772

Q. What would you think of an educated physician  
who would himself do that?

A. I would not believe he said it, and I do not think  
he did.

Q. Well, suppose he did say it?

A. Unless he told me himself—if I heard it through  
another person I could not credit it.

Q. Suppose the counsel who drew this will should  
swear that at the time he was having interview with  
Carlton in reference to drawing this will, that Carlton 1773  
told him that, would you believe it?

A. Well, if a gentleman of such intelligence would say  
that Doctor Gates used exactly that language, and he  
remembered it as his specific language, of course I would  
be bound to believe it, but in general terms—

Q. Well, in that belief that he did use it, how would  
you account for it?

A. Well, I might have accounted for it that he was  
very lax in his phraseology, or that he thought he

1774 would be better understood in that form than by using more specific terms, more correct medical language.

Q. Now, the laxness in the phraseology is entirely uncalled for by my question; I am now assuming that he did use those very words; how would you account for such an act on the part of a physician?

A. I think I have already said how I might account for it.

Q. Well, in this connection, leaving out the laxness of the phraseology, how would you account for it?

1775 A. Well, if Mr. Sheridan will read what I said, if it is not satisfactory I will answer the question.

Q. In this connection, leaving out the laxness of the phraseology, how would you account for it that he did drink the water for that purpose, as he himself declared, to take the coating off his stomach like the wall off a ceiling?

A. My last answer is not satisfactory to you.

Q. Not at all, sir?

1776 Mr. LYON: It is an answer to the question—a perfect answer to the question—counsel may repeat it forty times.

Mr. VAN PELT: I asked the Doctor how he would account for an educated physician drinking large quantities of hot water to take the coating off of his stomach the same as the wall off of a ceiling.

1777 Mr. LYON: He has answered that distinct question' how he would account for it.

Q. I want you to account for the act assuming that he did that for that purpose—drink large quantities of hot water to take the coating off of his stomach the same as the wall off of a ceiling?

Mr. LYON: Your assumption is that he did drink it for that purpose.

Mr. VAN PELT: Yes.

A. Well, I should think that he had made very imperfect and improper use of his facilities for the study of physiology and pathology. 1778

Q. Would it not be consistent with the idea that he was laboring under an insane delusion also?

A. I do not see why it might not be; and a failure of memory of what he had learned before in his medical studies.

Q. Would you think that a person who would do that would be also likely to suspect that he had been poisoned against the advice of such eminent medical gentlemen as 1779 Doctor Wood, Doctor Arnold and Doctor Upham?

A. He might suppose that as against their advice even without this—without such method of self treatment.

Q. Well, would not you think that a person who would do such an unreasonable and preposterous thing as this would be very likely to have the belief that he had been poisoned, against the advice of these medical gentlemen?

A. Well, I do not see that that should make any difference in his distrust of their opinions, and his confidence in his own. 1780

Q. Would not it show that something was wrong in his mind?

A. Not necessarily, I think.

Q. What, to drink hot water for that purpose, would not that show there was something wrong about his mind?

A. Well, it might make one suspicious that there was.

Q. And would not that make him peculiarly subject to a delusion that he had been poisoned when he had not? 1781

A. Well, I don't know, I am sure.

Q. How?

A. I don't know that it would or would not; I can very readily believe that a man who had that notion about removing the coating from his stomach, should be ready to receive other notions which other persons better informed might regard as merely motives.

Q. Would not these be strong, confirmatory circumstances, that there was something wrong in his mind?

1782 A. I am not prepared to say that it would or would not.

Q. Are you prepared to say that it would not ?

A. No, I am not.

Q. Did you discover from the testimony that Carlton was in a very reduced state at the time he executed this will ?

A. Physically, yes, I did.

Q. That he was unable to sit up, and had to be supported ?

1783 A. Yes.

Q. Is it not usual in all cases of extreme physical prostration and weakness, that the mind is to a considerable extent weakened and impaired, and rendered more susceptible of insane delusions and unusual notions ?

A. I think it is so.

Q. Would you consider that a person in Carlton's condition of body and mind at the time this will was executed, was capable of transacting business involving hundreds of thousands of dollars ?

1784 A. It would depend upon what the nature of that business was ; if it was the conveyance of property of such value, I think he might have been in a condition of mind justifying him in doing it correctly and with prudence and good judgment.

Q. Properly estimating the propriety of making a sale at a certain price ?

A. Yes.

Q. In the very act of dissolution—the very act of dying ?

1785 A. That is a little poetical ; you do not mean in the last five or ten minutes—the last five or ten breaths ; it would depend upon the time you cover by the phrase in the very act of dying.

Q. Well, he died on Saturday night and the will was made on Thursday, and he was reduced to such a state of weakness at the time the will was executed, that he had to be bolstered up behind and before and the will—you have never seen the will ?

A. No, sir.

**Mr. LYON :** The doctor has read the testimony, and is 1786  
fully acquainted with the facts as they took place.

[The original will was here sent for to show to the witness.]

**Q.** Doctor, I will ask you one or two questions to occupy the time ; have insane patients a proneness to die of diseases of the lungs and liver, and digestive organs?

**A.** Yes, sir ; many do die of such diseases.

**Q.** Have they not a proneness to die of these diseases? 1787

**A.** Death by disease of the lungs is very common among insane patients.

**Q.** Did you discover by the testimony in the case that Carlton's lungs were diseased?

**A.** Yes, sir.

**Q.** And the immediate, if not the only cause of his death?

**A.** Yes, so far as is stated, I believe that is the case ; of course many persons die of disease of the lung who 1788  
are not insane, whose minds are not at all disordered?

**Q.** Oh, certainly, but my question is this : whether as a medical fact it is not settled by actual observation that a large number of insane persons die of those diseases?

**A.** They do.

**Q.** Then I understand you to say that from all the circumstances of this case, as you have become possessed of them from the testimony, you are not prepared to say that Carlton was insane?

**A.** That is so, sir.

1789

**A.** Are you prepared to say that he was sane?

**A.** No, sir, I am not.

**Q.** But all the circumstances to which I have called your attention specially, are consistent with the idea of his insanity?

**A.** They are, I think—yes.

**Q.** Now, I will go back to the question I asked you before ; a person so reduced in physical strength as to be unable to sit up at the time he executed the will, having

1790 to be bolstered up behind and supported before, his two legs, by other persons, and whose signature indicates—showing witness the signature to the original will—so much weakness on the part of the person writing it as that, and having the peculiarities or eccentricities that I have called your attention to in detail—eccentricities of mind—whether you think that person was in a proper condition to execute a will of property, amounting to hundreds of thousands of dollars?

A. I will say that I think he may have been so.

1791 Q. Well, now, on the facts as I put them now?

A. I mean just on the question you put.

Q. He may possibly, but I ask you whether the chances are in favor of his making a will with a proper regard to the right and interests of those having a claim upon his testamentary bounty?

A. I think he may have done so.

Q. My question is whether they would favor the idea that he was in a proper condition?

A. They would not necessarily favor the idea, but I do  
1792 not think they are inconsistent with the idea, because other considerations might be introduced into the general question founded upon actual evidence and unmistakeable fact, which could be done certainly in this case; which would justify one in giving a much more positive opinion than I have expressed in this last answer.

Q. Suppose a person should incorporate in the will itself a provision that an autopsy of his remains should be made, the contents of his stomach should be analyzed to discover traces of poison that he said he might have  
1793 taken months before, and that he set apart twenty-five thousand dollars to prosecute the persons that he designated as having poisoned him; and suppose that his three physicians all advised him that all the symptoms of his case could be satisfactorily accounted for on other grounds—grounds of the disease that they had discovered upon him—what would you think of the mental condition of that man when he made this will?

A. Well, I would not think he was exactly insane; it might indicate—admitting him to be a physician—a man of great positiveness and obstinacy in his own opinion.

Q. Would they be consistent with the idea that he was laboring under an insane delusion? 1794

A. They might, and the contrary; they might show eccentricity; a great many persons think that the conduct of Doctor Warren, who directed his body to be dissected after death, and his skeleton to be hung up in the Anatomical Museum and preserved perpetually there, was evidence of the old gentleman's insanity, but physicians don't generally regard him as ever having been so; another very eminent and worthy man, in that line, directed in his will that after his death his body should be taken out a certain distance from a certain headland—Quarry Head—and sunk at sea at a certain hour, and no one ever suspected him of having been insane; this direction to examine his body *post mortem* is not unusual with physicians; and the fact, that he supposed himself to have been poisoned, I do not think increases the presumption that his mind was insane. 1795

Q. Did those persons assume to give two or three hundred thousand dollars to strangers, that they had acquired from their family? 1796

A. That I am unable to say; however, there is evidence in this case showing the testator's intellectual condition in regard to certain matters connected with his property and last testament, which, of course, I am bound to take into consideration as bearing upon the whole question; his remark to Mr. Radford, in reply to Mr. Radford's question in regard to the claims of his mother upon his bounty, and his correct appreciation of his real estate which had been sold to him by Mr. Rose, who made some remark at the time of signing the will—witnessing the will, and one or two other remarks made respecting the weather by one of the gentlemen, and his response to them, showing that his mind was so much occupied of late by attention to his own affairs and his condition that he had not paid much attention to the weather or to the world, all bear upon his intellectual condition at the time. 1797

Q. Was it possible for him to have talked reasonably, and reasoned correctly on many subjects, and still been subject to an insane delusion?

1798 A. Of course it is ; but, in relation to this matter, the claims of his mother, his conversation with Mr. Romer must, of course, be taken into consideration by a person approaching the subject, as I do, without the slightest partisan feeling.

Q. Could he have talked about the weather and about property, and talked to Mr. Romer as he did, and at the same time be laboring under an insane delusion that his mother was trying to poison him, and was his tormentor ?

1799 A. He might be.

Q. You do not mean to commit yourself to either theory of his case—that he was insane or sane ; you merely state, as I understand you, that all these circumstances can be accounted for on the ground that he was insane or that he was sane ?

A. They fail to satisfy my mind either that he was sane or insane.

Q. Yes ; they leave you in a state of uncertainty ?

A. They do ; but I think they all can be accounted for 1800 on other hypothesis than that of insanity.

Q. You have no particular desire to account for them on any other hypothesis than that he was insane ?

A. (The witness snapped his fingers.) That is all I care about it ; I am free to form any opinion, and I stand by it, and take the risk of it, when I think I have ground for it.

Q. Is not it very difficult sometimes to discover whether a person is sane or insane ?

A. It seems to be in this case.

1801 Q. In your institution you often have persons discharged who have been committed as insane ?

A. No ; not very often.

Q. Well, sometimes ?

A. Yes, sir ; one or two of my constituents has departed in that way.

Q. Had you Commodore Meade ?

A. Commodore Meade was a resident and patient—an insane patient in the Bloomingdale Asylum of which I have charge.

Q. You received him there as an insane patient? 1802

A. I did.

Q. And kept him there how long?

A. I think, about two months.

Q. And did you let him out?

A. No, sir.

Q. How did he get out?

A. He was discharged by Judge Sutherland, on a writ of *habeas corpus*.

Q. On what ground?

A. On the ground, as the Judge said to me, that the 1803 Commodore had been crazy, to his knowledge, for forty years, and that he did not think he would ever be cured by being kept in an insane asylum, and he might as well be discharged.

Q. Was not he discharged upon the ground that his case had been adjudicated, and he had been reported as being of sound mind?

A. He was not.

Q. Was there not a reference in his case, and were not medical gentlemen requested to see him, and did not they 1804 report him to be sane?

A. No, sir.

Q. Was not he discharged on that ground by Judge Sutherland, on the ground that he was not insane?

A. It was so reported in the newspapers.

Q. Was not it true?

A. No, sir.

Q. On what ground was he discharged?

A. He was discharged on the ground that Judge Sutherland did not think it was dangerous to his life or 1805 to the life of other persons for him to go at large.

Q. You say that Judge Sutherland thought so?

A. And I thought so.

Q. But you kept him there until he was discharged by the Court?

A. I am bound to receive them when they are sent there.

Q. Are you bound to keep them there whether you believe them to be insane or sane?

1806 A. I am bound to keep them there until I form an opinion as to their sanity or insanity, myself.

Q. In many cases it is difficult to determine whether a person is sane or insane ?

A. Yes, sir, it is, undoubtedly.

Q. It is a subject of great difficulty ?

A. It sometimes is, of very great difficulty.

Q. A person may talk rationally and sensibly on any subject excepting the particular subject upon which his mind is affected ?

1807 A. So most people think ; but I think those cases are exceedingly rare—much rarer than physicians or the older authors suppose.

Q. Cannot an insane patient talk sensibly about the weather and at the same time feel that his nearest friend and relative is his deadliest enemy, without any cause ?

A. Yes ; but every subject embraces something more than the weather.

Q. Is there not a species of insanity called monomania ?

1808 A. Yes, sir ; there is.

Q. What is monomania ?

A. Monomania is strictly and properly a perversion of the rational judgment upon one class of subjects.

Q. Or upon one subject ?

A. It is very rarely confined to a single topic.

Q. Well, if a person thought he was poisoned by his nearest relative without any cause, would not you call that monomania ?

A. Yes.

1809 Q. Well, that is one subject then ?

A. Yes.

Q. And he could talk about business, and transact business of all kinds the same as ordinary people ?

A. Perhaps not of all kinds ; business relating to that individual he might not.

Q. He could keep books ?

A. He might, certainly.

Q. He could reckon figures, keep accounts ?

A. Yes.

Q. Could he talk as sensibly and rationally on any

other subject with which he was conversant, upon which 1810  
his mind was not disordered?

A. Many insane persons can do so; as a general proposition there is no reason why he might not.

Q. The insane delusion consists in setting out upon false principles, does it not—setting out upon false principles, and then reasoning from that false ground?

A. Well, I have already given a definition of what I understand an insane delusion to be; the premises may not necessarily be imaginary or false; it may consist in the delusion; may consist in the inference drawn, and 1811  
reasoning upon the premises.

Q. But the principles upon which he sets out may be wrong, and then he will go on and reason intelligently and sensibly from those false principles also, will he not?

A. Well, that is according to the old opinion; I do not think it is the proper way of expressing the method by which insane people reach their conclusions.

Q. Have you ever read the work of a French physician by the name of Eskerole?

A. Yes.

1812

Q. Is he considered a good authority?

A. Yes; all his opinions are not accepted by the present school of even French writers, although he is their main authority in France.

Q. The patient assuming, for instance, a fact that has no foundation at all in truth will be able to go and reason that fact sensibly and intelligently, the same as if it did exist—would he not?

A. Reason intelligently.

Q. And a person who did not know that that fact was 1813  
destitute of foundation, or only existed in the mind of the patient, from his reasoning on the subject would not discover that he was insane?

A. That is so.

Q. Then Carlton Gates might have talked and acted in the manner he did before the gentlemen who were subscribing witnesses to this will, and still have been subject to an insane delusion with regard to his mother?

A. He might undoubtedly.

(Signed) D. T. BROWN.

1814 Mr. LYON: I propose to offer in evidence a letter of Dr. AMOS W. GATES, which I proved and had marked for identification.

The letter was received in evidence and marked "Proponent's Ex. No. 1, of January 27, 1870."

Mr. LYON also offered in evidence a letter of Dr. Gates, dated February 24, 1864, referred to by him in his examination, which was marked "Proponent's Ex. No. 2  
1815 of January 27, 1870."

Also that part of Exhibit "B" of November 19, 1869, which was in Dr. Gates' handwriting, which was marked "Proponent's Ex. No. 3 of January 27, 1870."

Mr. LYON: There was one witness at the last meeting when I was not able to be here, who omitted to state an important part of the evidence for which he was called; and I propose to recall him for that purpose. Perhaps the  
1816 counsel will admit that he would swear that he arrived in Yonkers on the 11th of August, with Dr. Hulbert after seven o'clock in the evening; I consider that an important piece of evidence in this case.

Mr. VAN PELT: Seven o'clock in the evening on the 11th of August?

Mr. LYON: Yes.

1817 Mr. VAN PELT: If you will make that statement I will admit that he would swear to it.

Mr. LYON: I am advised that the statement he was prepared to make, is that he arrived in Yonkers on the 11th of August, at seven o'clock.

ADOLBERT PELTON, being sworn by the SURROGATE, in be- 1818  
half of the proponents, was examined by Mr. LYON,  
and testified as follows :

Q. Where do you live ?

A. New York.

Q. What is your business ?

A. Employment clerk in an employment office.

Q. Whose office ?

A. Bedell's.

Q. How long have you been there ?

A. About seven years.

1819

Q. That is an office where servants are engaged by em-  
ployers who want servants ?

A. It is.

Q. Do you know Mrs. Gates—that lady sitting there ?

A. I recognize this lady sitting here—yes sir.

Q. Has she employed servants at your office ?

A. She has.

Q. You keep a record do you upon your books of all  
servants that are employed at your office ?

A. I do ; yes, sir.

1820

Q. Commencing on the 3d of December, 1868, down to  
the first day of April, following, how many servants were  
engaged at your office by Mrs. Gates ?

A. At least ten.

Q. What class of servants did she generally engage ?

A. Well——

Q. Low-priced servants ?

A. Well, they were generally the lower priced ser-  
vants—yes sir.

*Cross-examined by Mr. VAN PELT :*

1821

Q. During what time ?

A. From December—about the first of December, 1868,  
till April, 1869.

Q. Did she engage them in person every time ?

A. I can't say she did—no sir.

Q. Do you not know that other people came there from  
her house to engage a portion of them ?

A. There might sometimes—at most times she was

1822 there herself—I think in one or two instances some other person came.

Q. What was that other person?

A. I could not say.

Q. Was it a man or a woman?

A. It was a woman.

Q. But it was not Mrs. Gates?

A. No, sir.

Q. Did she tell you anything about the circumstances under which she wanted servants?

1823 A. No, sir: she did not: she merely came in and said she wanted servants, and we got them for her.

Q. Did she not tell you that her son was an invalid; that it was very difficult to get along with him, and that it was hard for her to keep servants in the house?

A. No, sir: she did not.

Q. By Mr. LEON: The servants were all engaged for that house?

A. Yes, sir.

Q. By Mr. VAN PELT: Have you got the names of 1824 those servants?

A. Not here.

Q. Have you got the names of them anywhere?

A. They are on the books of the office.

Q. Where is your office?

A. No. 340 Fourth Avenue, New York.

Signed ADELBERT PELTON.

Doctor CHARLES A. LEE, being recalled as a witness in 1825 behalf of contestants, was examined by Mr. VAN PELT, and testified as follows:

Q. Can the conduct of Carlton Gates towards his mother, that has been testified to by the witnesses, and with which you are familiar, be satisfactorily accounted for on the ground that he was under the influence of liquor at the time, or in a state of delirium?

A. No, sir; I think not.

Q. Why not?

A. In the first place Carlton Gates was not a drinking

man; he was not in the habit of drinking; I know that 1826 from my own personal knowledge; in the second place, it was too long continued—this treatment to his mother, as proved by the evidence; I believe that there are only two witnesses who have sworn that they ever saw him intoxicated, and that was only once; it appears to me very inconsistent to attribute all his conduct to the effects of drink, continued as it was through a whole year; it would be a miracle, even in a drunkard, one who was in the habit of using ardent spirits every day, to see such conduct manifested, as he manifested for a whole 1827 year, in my judgment.

Q. Do you know of any kind of liquor that would produce, upon the mind of a person who might drink it, the delusion that his nearest relative was trying to poison him?

A. Well, I have never known of such a case—never have heard of such a case.

Q. Would that habit of drinking liquor account for Carlton's continuous ill treatment of and antipathy against his mother? 1828

A. No, sir; I do not think it could.

Q. Could Carlton have been continuously under the influence of liquor, to any extent whatever, during all the time that he manifested this antipathy towards his mother?

A. That I just stated; he could not; it was too long continued.

Q. You say that you knew Carlton well in his lifetime?

A. Yes, sir. 1829

Q. What effect would a very small quantity of alcoholic stimulants have upon his body and mind?

A. Well, I have never seen him under the influence of liquor, although I have been intimate with him all my life; he was often a visitor at my house; he never asked for liquor; I sometimes gave him a glass of wine or something of that sort, but I cannot say that I ever saw him under the influence of liquor at all.

Q. What effect would liquor have upon his body and mind in the condition that he was in?

1430 A. Well, it would stimulate him, it would excite him; he was a very excitable temperament, and a very little would excite him, and make him very, probably, loquacious, talkative; he had great conversational ability, and any stimulants would probably lead him to talk immoderately, a moderate quantity I think would excite his conversational powers; but as to any delusion or anything of that kind induced by liquor, I am not acquainted with any such fact, except at times a man drinks enough to see double, as they say; but that is a different thing  
1631 from delusion.

Q. How long would that condition of seeing double continue?

A. Well, that would last but a short time; it might last an hour or two, possibly.

Q. It would not last continuously, days and weeks?

A. Oh, no, no.

Q. Could this continuous hostility that Carlton had towards his mother, down to the time of his death, be caused in any way by the use of liquor?

1632 A. No, sir, I think not; I have studied the subject, I think, of the effects of ardent spirits, distilled spirits upon the human constitution, perhaps as much as most men of my age, and that is not one of the effects produced by drinking; on the contrary, it generally makes people very friendly and sociable; it excites more frequently the amiable affections than it does the malignant.

Q. Would not—if liquor was the cause of his antipathy towards his mother—would not it make him quarrel-  
1633 some towards others too?

A. Well, there are instances—I cannot say positively in regard to Carlton in that respect; individuals differ in temperament and constitution; liquor sometimes makes men quarrelsome, we know that, it is every day experience; but so far as I know or have heard of the effect of liquor upon Carlton, it had the opposite effect upon him.

Q. Could Carlton talk and reason sensibly and intelligently on matters of business and his affairs, while under

the influence of liquor, to such an extent as to be intoxicated? 1834

A. Well, of course he might, as other men do, talk rationally in regard to business, and still be to a certain extent under the influence of liquor; there are degrees, you know, in regard to the effects of liquor.

Q. Would not it be at once observed that he was under the influence of liquor?

A. I think so; those who are acquainted with him, intimately acquainted with him, would have known.

Q. Then how do you account for this conduct and treatment of his towards his mother? 1835

A. There is only one way that I could account for it, or I think anyone could rationally account for it, and that is a permanent settled delusion; he had made up his mind that his mother was not friendly to him, that she was even willing to poison him, that she was not only turned out of doors once, but a great many times to my knowledge, with the same threat that if she returned he would shoot her, and she made it a home with my sister-in-law most of the last year, for that reason; Carlton 1836 would write to her, come home, and would change his mind—perhaps his mind would change every hour—you cannot tell; she would go home and he would treat her very kindly for perhaps half an hour or an hour.

Mr. LYON: Are you swearing to things that took place in your house, or from gossip?

Witness: You need not receive this at all, unless you choose; there had been great latitude allowed in regard to other witnesses, and I am not talking any more than has been permitted to others. 1837

Q. Are you able to account for all this conduct—this strange and extraordinary conduct on the part of Carlton—in any other way than that he was laboring under an insane delusion?

A. I have stated that before—I repeat it again: I cannot account for it in any other way; and I believe I will go farther, if I am allowed: if his mother—if he had

1838 killed his mother, when he pushed her down stairs, he never could have been punished according to the decisions of law, because he was laboring under a delusion when he did it; he thought the mother was intent upon poisoning him; according to Chief Justice Shaw, and a great many other decisions, he never could have been punished for the act, and therefore I believe he could not make a legal will, *a posteriori*, for the reason that his mind was disordered, and he was laboring under what I call a permanent delusion.

1839 Q. Define the term "permauent delusion"?

A. Well, it is where a person believes things to exist which do not exist, except in his imagination.

Q. Is it necessary that a person should be insane on all subjects to be subject to an insane delusion?

A. Yes, he might be; I call him a monomaniac, supposing him to be laboring under that form of insanity we call monomania.

Q. You do not understand my question; could a person who is subject to an insane delusion talk rationally and reason correctly on subjects not connected with the subject of his delusion?

A. Certainly.

Q. Could Carlton have this antipathy and this insane delusion with regard to his mother, and still talk rationally on the subject of his business, about the weather, and about the buying and selling property?

A. Yes, sir.

Q. Are these cases of frequent occurrence?

A. Yes, sir; you will find any number of them in every insane asylum.

Q. Is an insane delusion a test of insanity?

A. Yes, sir; it is now the medical test and the legal test, both in this country and in Europe; it is the only test.

Q. Is it a reliable test?

A. Yes, sir; it is the only reliable test—so considered.

Q. What other reasons are you able to assign for not attributing this strange conduct of Carlton's to his being under the influence of liquor or delirium?

A. What other reasons.

1842

Q. Yes, sir ; if any ?

A. Well, he—I judge from the testimony that his conduct was such as could not be accounted for on any other theory—on any other supposition than that of insanity ; he did not conduct like an intemperate man—like a drinking man—like a drunkard ; he acted just as I should expect a crazy man would act ; I speak now of the last year of his life.

Q. And can you say that the existence of this insane delusion was consistent with all his acts and conduct, 1843 and the circumstances disclosed ?

A. Yes, sir, perfectly ; and his acts could not be explained satisfactorily on any other theory than delusion.

*Cross-examined by Mr. LYON :*

Q. When did he return from Europe the last time ?

A. A year ago last November.

Q. How long had he been gone ?

A. Well, I think he was gone over two years.

Q. How soon after he returned did you first see him— 1844 after his return in November ?

A. I did not see him after his return ; I saw him before he went away.

Q. Then, from the period of his death back, you had not seen him in three years ?

A. Yes, sir ; I simply judged from the testimony as to his actions.

Q. Have you been in Court up to to-day during the taking of any of the evidence since the time you were on the stand before ?

1845

A. Yes, sir.

Q. What day, and what witnesses did you hear testify ?

A. I was here once or twice, I think.

Q. Well, what witnesses did you hear testify ?

A. I heard Mrs. Nesbit and Miss Martha Ann Nesbit.

Q. Were you here on any other days ?

A. I cannot say whether I was not.

Q. Do you remember hearing any testimony stated

1846 here on the stand since you were a witness on the stand, except to-day?

A. I cannot say I have.

Q. (*By Mr. VAN PELT*): Was it necessary that you should have seen Carlton for the last three years, or have heard any testimony since you heard the last, to determine whether Carlton could have done the things that have been supposed under the influence of liquor or delirium?

A. Judging—knowing him so well, I judge, of course, 1847 of his conduct from the testimony which I have read and examined and heard.

Q. And it was not necessary to have seen him?

A. It was not necessary to have seen him.

Q. Within the last two years, to form an opinion?

A. I formed an opinion the same as Doctor Brown did—from testimony I did not hear.

Q. (*By Mr. LYON*): What testimony have you read, besides that which you have heard—whose testimony?

A. Well, I don't know; the case was closed—Mr. Van 1848 Pelt closed his witnesses.

Q. You have read none of the evidence, since that time—the evidence on the side for which you are a witness?

A. No, sir; I have not.

Q. (*By the SURROGATE*): Liquor does not affect all persons alike, does it, Doctor?

A. No; I said it did not—that it made some quarrelsome, and some good-natured.

Q. Some good-natured towards their enemies and 1849 pleasant towards their friends?

A. Yes, sir.

Q. And the reverse sometimes?

A. Yes, sir.

Q. (*By Mr. VAN PELT*): As soon as the effects of the liquor pass off they return to their normal state?

A. That is what I stated; but his condition was permanent; a man does not continue drunk always who drinks,

Mr. VAN PELT : That is all, unless you wish to add 1850  
anything as an expert, which has not been called out.

*Witness* : I wish to ask one question of the Surrogate ;  
as I understand the duty of an expert, he is expected to  
give the grounds and reasons for his opinions, is he not ?

The SURROGATE : He may be required, I suppose, to  
give them.

*Witness* : Well, so I understood it, and that he had a  
right to submit these reasons in writing under oath ; 1851  
now, when I was examined before, I had no opportunity  
to state the grounds and reasons for my opinion, except  
I had heard the testimony, but I had no opportunity to go  
at all into details ; now, I have written the reasons for my  
opinion and have reviewed the whole case, and I wish to  
submit that, under oath, as a part of my testimony ; if  
you are willing, I will have three copies made of it, so  
that there will be no expense, and you can admit it under  
oath ; I think I have a right to claim it.

Mr. VAN PELT : I would be glad to have it in, if the 1852  
Surrogate and the other side have no objection.

[The witness here produced some sixty foolscap pages  
of manuscript.]

Mr. LYON : I think it would be interesting, and propose  
that we do have it, and that the doctor be accommo-  
dated.

Mr. VAN PELT : Is it written out ?

*Witness* : As I have got it here, I have no desire to 1853  
read it ; I only want to give my reasons, that is all.

Mr. VAN PELT : I suppose that is a treatise on in-  
sanity.

*Witness* : There is nothing in it but what relates to this  
case ; there is nothing in it but what is in point, so that  
you see it is a large case ; I would like to read one  
page—opening the manuscript.

1854 Mr. LYON: I object.

*Witness:* It is only upon what I consider the duty of an expert, to give the grounds of his opinion.

[The paper was admitted in evidence, and the witness promised to furnish three copies of it at the next meeting.]

(Signed) CHARLES A. LEE, M.D.

1855 Mrs. MARTHA GATES, being recalled in behalf of the contestants, and examined by Mr. VAN PELT, testified:

Q. You remember the interview that you had with Dr. Wood at the depot, when the subject of your son's making a will was mentioned, do you?

A. Yes, sir; I went with the doctor the last time he came to the house?

Q. Tell us what was said at the depot?

A. Before he had been to see my son.

1856 Q. When he asked you about your son's property, the amount he had?

A. That was Thursday.

Q. The interview he has testified to?

A. Yes; he said my son was about making a will; I said: "Why, Doctor, you know he cannot; his mind isn't in a state; he is very troubled—very much; I am sorry he has got about it; you know he can't make it, that he is not of right mind;" says I: "You told me so, that he was not in his right mind."

Q. What did he say in reply to that?

1857 A. Well, he said he thought he ought to make his will; "Well," says he, "what property has your son?" "Well," says I, "he has property I have given him, no other;" "Well, whereabouts is this property situated?" I told him there was some in the Bowery and some in the neighborhood of St. John's Church; he asked me what I thought it was worth; I told him I could not tell, because it had never been sold, I could not say; well, he

then wanted to know "how much money did your sisters 1858  
leave; did they leave you \$60,000 or more?" says I, "I  
can't tell what they left; they left a good deal of prop-  
erty, and I could tell you all about it if I had my papers  
before me, but I can't do it now;" he said: "Mrs. Gates,  
I saved you a good deal of property at one time," said I,  
"how so?" "Why," says he, "your sister was about  
making a will just before she died, and," says he, "did you  
know that a lawyer went there, and his father was with  
him to execute the will?" I said I did not; "Well," says  
he, "I was there, the lawyer was there, I was there and 1859  
the lawyer's father was there;" says I, "Doctor, you  
are the man I wanted to find; I wanted to find you five  
years ago, and now I have got you;" says I, "we gave  
chairs, and carpets, and tables, to the servants in the  
house to find you, and we could not find you;" "Yes,"  
says he, "I was in the house, and the lawyer was there  
also, and the lawyer's father was there, and Dr. Wood  
was there the evening before my sister died, and they  
were not admitted up into the room; the lawyer sent  
word up to my sister to see her——" 1860

Q. What did the doctor say in reference to it, after you  
said he was the man?

A. He looked as if he could sink in the ground; he  
could not say anything; he was the very man I had been  
looking for five years ago.

Q. With reference to another litigation?

A. Yes; you see my sister was sick——

Q. I do not desire to go into that; all I wanted to  
have was the conversation between him and you at the  
depot, because he has testified to that? 1861

A. Well, the first time I saw him at the depot I went  
to meet him, and he was just stepping into a car-  
riage to come up to Carlton to see Carlton; he had re-  
ceived a telegram, and I rode with him in the carriage  
from the depot; in the carriage he says, "Mrs. Gates, we  
will have to send your son to the asylum;" "Well," says  
I, "Doctor, whatever you think is best for him; I want  
the best of care taken of him; I will submit to any-  
thing;" says I, "do anything you think best, and per-

1862 haps it is best for him ;" " Well," he says, " no, not just now ; perhaps if I was to tell him that now, he would shoot me and you both ;" he says : " the best thing to do is to get a good nurse in the house, one who is accustomed to those kind of people, to take care of him ;" " Well," says I, " do so Doctor, and do so at once ;" and he says : " I will do so to-morrow."

Q. Why did he say that Carlton should go the asylum—did he give any reason ?

A. Yes ; he said that he could not be controlled.

1863 Q. And he did say that if he was to tell Carlton that, that Carlton would shoot him ?

A. Yes ; he said that he would not dare to say so to him ; that he would shoot him, and I saw the doctor ; the first time that Doctor Wood went up to the house I met him at the depot, and went up to the house ; that day I had some fruit—some grapes—some fruit—very nice fruit—to give to the doctor to take to the house ; he says : " Mrs. Gates, he won't touch them, he will say they are poisoned ;" says I : " don't tell him who sent

1864 them, but take them and leave them in the room with him ; but you need not say where you got them from doctor."

Q. Mrs. Gates, have you \$80,000 or any other sum, other than this property that Carlton had in his possession ?

A. I have nothing else.

Q. Nothing in the world ?

A. Nothing in the world, not a cent.

Q. Will you please explain how it was that you changed  
1865 Carlton's room during his absence to the city on one occasion—the occasion Miss Palmer speaks of ?

A. Yes ; I had a very handsome carpet which had been bought for Carlton's library, and he was very particular, and I was very anxious to have the new carpet put down in his library, and he was then occupying a small bedroom, and one day when he was down to the city I changed his room and gave him a much larger room ; I took the library carpet up and put it down in that room, and made it very comfortable for him, but the

library carpet was up and I intended to put it down the 1866 next day; I was looking for Carlton to go to New York for sometime to do it, for he said: "mother, you can do it when I am in New York."

Mr. VAN PELT: I would like to present here a diagram of the rooms on the second floor, so that your Honor can see the room where he was first taken sick and the room where he died.

Q. Look at that and state whether it is a correct diagram of the second floor of your house, this being the library, this the room he died in, this the small room, this the north-east room? 1867

A. Yes, this is the library and this is the south-east room.

Q. And that is a correct diagram of the first floor, parlors running through on one side, and the dining-room and your dressing-room on the other side?

A. Yes, sir.

[The diagram was offered in evidence, and marked 1868 "Contestant's Exhibit A, of Jan'y 27, 1870.]"

Q. Which room did Carlton occupy, when he was first taken sick in August, as a bedroom?

A. The little bedroom—the hall-bedroom.

Q. Was that a very small room?

A. It was a good sized hall-room, but it was a small bedroom—one window.

Q. Too small for him to be comfortable or properly attended in? 1869

A. Yes, sir.

Q. And on this occasion when you changed him from that room into the other room, which room did you move his bed into?

A. The south-east room.

Q. It was the room adjoining the library?

A. Yes, adjoining the library.

Q. On the other corner?

1870 A. Yes, sir.

Q. And a much larger room?

A. Yes, sir, with three windows; it was a handsome, large room.

Q. And it was a much more comfortable room for a bedroom than the other which he had been occupying?

A. Yes, that little room was very uncomfortable, I thought.

Q. When did you move his bed there?

A. One day when he went down into New York; I  
1871 thought to have the two rooms all settled before he came back, and his bedroom was settled, and the library was all cleared you know, but the new carpet was not put down.

Q. Where had you got that carpet?

A. I sent for it; he brought it from Europe himself.

Q. To put on his library floor?

A. Yes, sir.

Q. And when he was absent in New York you took up  
1872 the carpet which had been on the library floor intending to put it on the floor of the bedroom to which you moved him—the hall-bedroom, and to put the carpet which he had brought from Europe on the library floor?

A. Yes, sir.

Q. What was your object?

A. To have his library nice, and to make him feel pleased and comfortable.

Q. Did you do it to annoy him?

A. No, I never annoyed him in my life; you could not  
1873 get a person in the Town of Yonkers to say such a thing.

Q. It was done out of kindness to him to make it more comfortable and pleasant for him?

A. Yes, sir.

Q. Miss Palmer was present at the time you made this change?

A. Oh, yes; she told Carlton what she had a mind to.

Q. That is a circumstance which she has mentioned in the testimony as an attempt of yours to disturb Carlton and annoy him by changing his room?

A. No, I gave him a great deal better room. 1874

Q. How long did he occupy that room?

A. He did not like it, and I said "if you do not like it go back to the little room where you have been sleeping," and he went back that very night.

Q. He did not occupy the large room?

A. No, sir.

Q. But went back into the small room?

A. Yes, sir; I said "if you would like it go back into the small room, there is no harm done."

Q. That was the only occasion on which you ever at- 1875  
tempted to change his room?

A. The only time; I asked him a great number of times, and he said: "Sometime when I go to New York you can do it;" I was afraid to do it before; I wanted to a good many times, but I was afraid to do it; but the rooms wanted cleaning and they wanted fixing.

Q. Do you remember of Carlton using any improper language to you, at the table, when you and he, and Miss Palmer were taking your meals?

A. Yes, times without number; I could not tell them. 1876

Q. Do you remember of your leaving the table?

A. Yes, and sometimes when I was going to have dinner, I would make an excuse and say that I was going to take a walk, and I would go out or retire into some other part of the house.

Q. Would he never help Miss Palmer first, and refuse to help you to anything to eat?

A. Yes, sir.

Q. In her presence?

A. Yes, sir; I think she encouraged it. 1877

Q. Who hired Miss Palmer?

A. I hired Miss Palmer; I had a great deal of trouble with my help as you have heard, and I went to my friends in New York to see if I could not find some person; I finally went to Miss Harriet Ward; I thought—

Q. Why did you have trouble with your help?

A. Because Carlton's mind was so tossed; he would say sometimes not to mind my mother, for my mother is crazy.

8 Q. Who, Carlton?

A. Yes, Carlton.

Q. State how you came to hire Miss Palmer?

A. I wanted a housekeeper; I was not there, and there must be some one there to take charge and go ahead; I went to Miss Ward; I asked whether she could tell me of a person—somebody that would do—that I had a great deal of trouble; she finally said that perhaps Miss Palmer, at the Plains, if I could find her, she might come; I had never heard of Miss Palmer before; I went 9 to Miss Palmer and saw her, and she agreed to come at \$200 a year—come by the month at the rate of \$200; I then went—after hiring her I went over to Mr. Hulbert; I said: “Mr. Hulbert,” says I, “you know Carlton’s mind is very much diseased, and I can’t hire people and I can’t keep them there; I thought I would come to you and state to you that I want you to send Miss Palmer to my house as though you had hired her, and not to let him know I had anything to do with it;” I told Mr. Hulbert to send Miss Palmer over as though he sent her, 0 not me; so she went over as though Mr. Hulbert knew her, and I had nothing to do with it.

Q. Why did you do that; why did you get Mr. Hulbert to recommend or introduce Miss Palmer?

A. In order to keep her in the house; because Carlton might not be pleased if he knew I sent her there, and perhaps he would send her off the next day, his mind was in such a state; I went to Dr. Hulbert and told him what my plans were; “Well,” says he, “I never saw Miss Palmer.”

1 Q. Look at that letter and tell us in whose handwriting it is if you know it?

A. I don’t know as I could just now; I might at some other time; I could not do it now.

Q. Did Miss Palmer then—

A. Let me tell you; I went over to Mr. Hulbert; Mr. Hulbert,” says I, “I think I will try to get you to send Miss Palmer to my house, and not let my son know that I hired her, because if he knew I hired her he would send her right away, and then I would know not what to do;”

he says, "I never saw Miss Palmer, but I have seen Mrs. 1882  
Coles, her sister; will you ask Mrs. Coles to come over  
and see me;" I did so, and then Mr. Hulbert wrote a line  
engaging Miss Palmer; Miss Palmer took a line from Mr.  
Hulbert to my son, as though he had sent her; I can't  
tell the words of it; he said, "I send you Miss Palmer.

Q. No matter what he wrote, just tell us the rest of it?

A. So Miss Palmer went as though Mr. Hulbert had  
sent her, and not me.

Q. And Carlton never knew that you had hired her?

A. No; he never knew; I went down then, and when 1883  
Miss Palmer came down to go up to the house, I was  
careful to go down to the depot and meet her, and tell her  
not to say that she had seen me, and not to let Carlton  
know but what Mr. Hulbert had sent her.

Q. Did Mr. Hulbert understand why you called upon  
him to have him introduce Miss Palmer?

A. Yes, sir, very plainly; I had gone to Mr. Hulbert  
once before and had told him that my son's mind was very  
much deranged: that was the early part of March; Mr.  
Hulbert knew all about it. 1884

Q. Did you send things over to Carlton—any game—  
at any time, by other persons?

A. From White Plains; I went to White Plains the  
first time I went, and I had some game; I had it to Mr.  
Hulbert's house, and I left it in the morning, and Mr.  
Elting, that is now Mr. Hulbert's son-in-law, and he was  
there and I got him to take the game—the birds down to  
the house—and told him not to say that I sent them.

Q. Why did you do that?

A. I was afraid that it would not suit, that he would 1885  
think they might be poisoned or something of that kind.

Q. Carlton would think so?

A. Yes, sir.

Q. Did you mention these circumstances to Mr. Hul-  
bert?

A. I would not say that, but I mentioned that he  
must not know where they came from; and when they  
were left at the house the notice was on it from the Plains;  
my sister didn't think I had sent them, because when

1886 they got there, they said from the Plains—the notice on the birds—and my sister did not know that I was at the Plains.

Q. Do you remember at any time locking up the bread from the servants?

A. No, I never did such a thing; I did not do it; the servant came to me on the Sunday after my son's death, met me at my bedroom door, and says, "Mrs. Gates I want some bread;" says I, "I don't know anything about the bread; I have not seen any bread except what is on 1887 the table; I have not been down stairs, and I know nothing about it; I guess you will find it.

Q. You had not been down stairs to have charge of the house for how long?

A. For months.

Q. Had you been out of the house for several days before that?

A. During Carlton's sickness I had been out of the house entirely; the servants had had entire charge of the house.

1888 Q. Did you ever lock up the bread from the servants?

A. I had no keys; they had all the keys.

Q. Did you have the keys of the wine cellar in which the ice was kept?

A. No; I had no keys of no part of the house; I don't know why the wine cellar was locked up.

Q. Who had the keys of the wine cellar?

A. The little girl said that Carlton had them all the time.

Q. You never refused to give him any ice?

1889 A. No; I went over to Mr. Radford's to get it for him; the first time Carlton asked for ice was on a Sunday, and there was none in the house; Mrs. Migy went out to look for ice, and did not succeed in getting it; this Sunday morning that he asked for ice I went over to Mr. Radford's and got it myself—got abundance of ice from Mr. Radford; I told Dr. Wood, and I told all the doctors how much ice he used; then afterwards we took it; the man came around every day, and they said the ice must be stopped, that he took too much.

Q. Who said that?

'1890

A. Dr. Arnold and Dr. Wood.

Q. How much ice would he eat?

A. I crushed ice and ice all the time ; any quantity of ice went into the room—too much—and the doctors said that he was eating too much—too much—and I thought perhaps it was best he should not, but I had not the key ; I did not prevent him.

Q. You did not have the key?

A. No, sir.

Q. You understood that the doctors had prohibited him '1891 having too much ice?

A. Yes, sir.

Q. And they told him that you had the keys and prevented him from getting it?

A. No ; he had all the keys.

Q. You never had the key of the wine cellar?

A. I had a key of the wine cellar when I was there.

Q. But you never kept it locked and prevented him from getting ice or anything?

A. No ; he always had one key.

'1892

Q. Did you at any time refuse, so far as you had control in the house, to allow the servants to have all they wished to eat?

A. Why, yes, of course, they had all they wanted to eat ; they were in the house six or seven months, and I guess they had all they wanted ; they had all the keys, and they could get what they wanted ; the night before the girls asked for the bread was Saturday night, and they had forgotten to buy bread, and had forgotten to mix bread ; there was plenty of flour, but they had forgot '1893 to mix it.

Q. You had not charge of the house for how long a time before he died?

A. No ; not a bit of it.

Q. Did you make it unpleasant for the girls to be there, and drive them off in order to interfere with Carten's comfort?

A. I did not see the girls for I did not go where they were.

1894 Q. Did you insult Miss Palmer, or try to injure her feelings?

A. No, sir; I did not dare to say a word about the house; I just put up with what they choose to give me; I let her have her own way; I never contradicted her because she would go and tell Carlton; she did just as she pleased.

Q. What was your object in allowing her to do so?

A. I tried to satisfy Carlton.

Q. Did you send away any of the girls?

1895 A. No; I have not sent the girls away; why, I have not been in the house scarcely since last March, until lately, you know.

Q. You saw those two girls who were witnesses here, who were in the house at the time of Carlton's death?

A. I did not send them away.

Q. Had you anything to do with them?

A. No.

Q. Have you had any girls since Carlton's death?

A. Yes, sir.

1896 Q. How many?

A. One came and staid a month, and the other has staid ever since.

Q. Have you had any trouble in keeping help since then?

A. No.

Q. Did you have any trouble in keeping help while Carlton was in Europe?

A. Not at all.

Q. For how many years have you kept the same help  
1897 continuously—have you had servants who have lived with you for years?

A. No; I can't say for years—for a year, or a year and a half, or two years—as long as that, and then change; just as long as they suited me and did well I would keep them, and when they did not I would change; I kept them just as long they suited me; I never kept any account; I did just as I was a mind to.

Q. Did you do anything, at any time, to interfere with Carlton's comforts, or to thwart his wishes?

A. No ; I did not ; I always did everything in the 1898 world for him, and punished myself ; he said go, and I went ; come, and I came—it was just as he pleased ; he was not accountable for what he did ; Carlton was not accountable at all for anything he did.

Q. But you did not make it a point to cross his wishes in anything ?

A. No, sir.

Q. Whatever his wishes were ?

A. Whatever they were I yielded.

Q. Did you lock up any coal from the girls ? 1899

A. No ; I did not lock any coals up ; I don't know anything about locking the coal up ; I was not in the habit of locking coal up ; I might have turned the key in the door to keep the coal dust from blowing out into the hall, but I did not lock the coal up ; that is a thing we used all the time ; that is nonsense to talk about locking coal up ; Mr. Hulbert sent my help away, if you want to know how my help went ; it just comes to my recollection.

Q. Did you find fault—what did you say to Mr. Hul- 1900 bert about sending your girls away and paying them the full amount before their time was up, if anything ?

A. On Thursday, the day after my son was buried, Mrs. Migy said she would be going away—she expected to go sooner ; she says : “ Mrs. Gates, I shall have to go away to-day ; ” but she did not come down to dinner, and they said she was sick, and we had some very nice soup that day, and I took a plate of soup up to Mrs. Migy, and some very nice fruit ; I said you did not come down to dinner, take a little soup, and I said you are not well, 1901 I know you like fruit, I have brought you some fruit ; she said I am glad you have brought it, I always eat fruit ; she did not come down to dinner ; then Miss Sault says : “ I shall leave you on Monday ; ” says I : “ What do you say, why do you not stay until your month is up ; ” she said : “ I think I would rather go before ; ” finally, the servants had come to me ; I had been out of the house for some time, and they came to me for soap and for various articles on the table ; says I : “ I don't know

1902 anything about them, you go to Miss Sault ;" so I went up stairs and saw Miss Sault, and she said she was going away that Monday following ; I says : " I think you had better stay your month, I do not want to be left alone, if you can stay I would like to have you stay ; she said she would rather go ; says she : " I will go on Monday ;" well, she had not seen to the table—I thought it a little strange ; then says I : " As long as you stay in the house I would like you to take charge—if you stay until Monday, take charge ;" says she : " No, I will not—I will go  
1903 this afternoon ;" so she went on Thursday afternoon after the funeral.

Q. She did not stay her month out ?

A. No.

Q. Who paid her ?

A. I will tell you—let me go on—so then Mrs. Migy went, and Miss Sault came down to go and bid me good bye ; at the door she says to me, " Mrs. Gates, I will bid you good bye ;" well, says I, " Miss Sault, you have not been here but two weeks, I hired you for a month, how  
1904 much do I owe you ?" she says : " I don't know that you owe me anything, Mr. Hulbert has just paid me \$25 ;" says I : " \$25 ! why, you agreed to come here for \$16."

Q. I want you to state what you said to Mr. Hulbert about paying the girls before their month was up ?

A. That is another thing ; Mr. Hulbert comes up stairs and says : " Mrs. Gates, I will bid you good-bye ;" says he : " I have been down stairs talking to your girls," he did not say where, " I have been talking with your two girls and asking them to stay ;" I looked at him :  
1905 " You have been very officious—I don't thank you for it, I am afraid you have been making some mischief, you don't look as if you were speaking the truth ;" says I, " it can't be that you would go and talk to my girls and not let me know it ; it don't look right ; there is something wrong about it ; what is the matter ? " " Well," says he, " I have asked them to stay and they are going to stay with you if you want them to stay ;" I says, " that is my business, and you should not interfere with the girls ;" " Well," says he, " they are going to

stay with you ;" " Very well," says I, then he bid me 1908  
good-bye ; I went down stairs to see how the kitchen  
looked and I saw one of the girls there.

Q. What you said to the girls I do not want you to  
state now ; I only want you to state what Mr. Hulbert  
told you about paying the girls off—come to that if you  
please ?

A. Well, he paid Miss Sault off ; then I went down  
stairs ; Mr. Hulbert did not tell me he had paid the girls,  
the girls told me so ; I went down stairs and one of the  
girls had gone out, and the other girl said that she had 1907  
just gone around a little ways and would be back very  
soon.

Q. Was that the time that Mr. Hulbert had just told  
you that he had seen the girls, and they had agreed to  
stay ?

A. Yes, sir ; as I say Mr. Hulbert had bid me good-  
bye and was gone, and by that time I had got more in-  
formation ; the girls came back and told me that they  
had been paid off.

Q. What was the names of these girls ? 1908

A. One was Maggie ; I think the other was Ann——

Q. They were the same girls who have testified here ;  
the two Fitzpatrick girls ?

A. Yes, sir ; those were the girls.

Q. Tell us what they told you ?

A. They told me that they were going away ; " Mrs.  
Gates, I am going to leave you ;" " Well," says I, " I am  
sorry for that ;" they said they must leave ; that they  
did not feel satisfied to stay here ; " Well," says I, " how  
much will I owe you ?" " Oh, you don't owe me any- 1909  
thing, for Mr. Hulbert has already paid me ;" " How much  
did he pay you ?" " He paid me \$10 for one, and \$14 for  
the other ;" he left me without any help in the house ;  
he had paid the housekeeper \$25, and he paid the two  
girls off on the same day, and he did not leave a servant  
in the house.

Q. Did the servants then refuse to stay the balance of  
the month and go away ?

A. I then said to her : " Oh, Ann, don't go away ; I

1910 don't feel able to move my hand or foot : say, you must not leave me ; it is cruel to think of leaving me now ; " Well, says she, " I will stay with you until Saturday ; " so they made up their minds to stay until Saturday, and afterwards they made up their minds to stay until Monday, and Monday they left.

Q. What portion of their month had expired then ?

A. About two weeks—about half their time ; but don't stop me, I must tell you all about it.

Q. Have you seen Mrs. Migy and Miss Sault, here in 1911 this Court ?

A. Yes, I saw them both in this Court.

Q. Did you bring them here as witnesses ?

A. No.

Q. They were brought here on the other side ?

A. On the other side.

Q. You understood that Mrs. Migy and Miss Sault were in the interest of the other side—of Mr. Hulbert ?

A. Yes, so I heard.

Q. Now, when Carlton did these things, that I have 1912 spoken about before—when he treated you with violence and so on—was he under the influence of liquor ?

A. No, I never saw Carlton take a glass of brandy and water in my life ; I don't think I ever did once in my life.

Q. Did you ever see him under the influence of liquor ?

A. I saw him that night he came home from New York.

Q. That same night that he threatened to shoot his father ?

1913 A. Yes.

Q. That is the only night ?

A. Yes ; I never saw anything like it before ; it nearly frightened me to death ; I was very much frightened ; I was too frightened to stay in the house ; I knew that his mind was not right, and he was besides under the influence of liquor ; it was evidently so ; that is the only time.

Q. Did he abuse you on that occasion ?

A. No.

Q. He was under the influence of liquor, but he did 1914  
not abuse you on that occasion?

A. No.

Q. When he did abuse you as you have stated hereto-  
fore, he was not then under the influence of liquor at all?

A. No, no, he was not under the influence of liquor.

Q. Are you certain of that?

A. Yes, I am certain of that—sure; that night that he  
came home I kept myself out of the way, for I knew he  
was under the influence—

Q. Did Doctor Arnold ever tell you, or intimate to you 1915  
that Carlton would like to see you before he died?

A. No.

Q. Did Dr. Hulbert?

A. No.

Q. Did Dr. Wood?

A. No.

Q. Did anybody in the house?

A. No; I was up in Yonkers every day, but I heard  
nothing of the kind; I was all the time in Yonkers,  
going down at night and coming up in the morning; 1916  
Mr. Hulbert drove me out of the house; he told me to  
get out of the house as soon as I could—that, if I did  
anything, or the servants did anything, it might throw  
him into spasms; Mr. Hulbert drove me out of the  
house.

Q. Did Dr. Arnold tell you, about two or three  
o'clock of the day that Carlton died, to go to the City  
for Doctor Wood?

A. He said that Carlton was not any better, and that  
he had been expecting Doctor Wood up, but he had not 1917  
come, and he did not know what kept him; says I:  
“Can I do anything for you?” says he: “If you would  
go to New York and find Doctor Wood;” says I: “I  
will do that;” he says: “There is a train going at three  
o'clock, you will not have but a few minutes to get  
there;” I left, and going down I stopped at the Tele-  
graph office and telegraphed Doctor Wood; I thought  
that he might get the telegram sooner than I could get  
there; then I went to Doctor Wood and he was not

1918 there, and I went to several other doctors ; I went to Doctor Taylor's—it was a very hot afternoon—and he asked me to come in and sit down a minute, and I got a glass of water at Doctor Taylor's.

Q. Never mind that ; all I wanted was to call your attention to the fact, that he wanted you to go and get Doctor Wood—that he had made an appointment and had not come, and that he was disappointed ?

A. He had ; he made an appointment the day before, Friday, and he was not there——

1920 Mr. VAN PELT : Mrs. Gates, I could hear more, if Mr. Lyon desired to hear it, but——

*Witness :* It would not be in favor of Mr. Hulbert, at any rate ; it would not do him any good.

*Cross-examined by Mr. LYON :*

Q. On what day was this, Mrs. Gates, that Doctor Wood—you say you were in the carriage with Doctor Wood—that you refer to, when this conversation took  
1921 place ; I want to fix the date—that is all ?

A. It is on Wednesday.

Q. On Wednesday of the first week he was ill ?

A. Yes, sir.

Q. Had Doctor Wood been up there before ?

A. No, I think not ; I think it was Wednesday—it might have been Tuesday, but I think it was Wednesday ; that was the time I had the fruit, you know.

*Re-direct examination by Mr. VAN PELT :*

1922 Q. When was this interview at the depot ?

A. That was the day ; it was on Thursday ; he told me he was about making a will, and he told me——

Mr. VAN PELT : That is all.

*Witness :* He told me—I then found that he had been at the house when my sister—he had been there with a lawyer, and he had been there with his father, at the

time my sister was going to have another will made, this 1923  
Dr Wood.

(Signed) MARTHA GATES.

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ESTHER E. WHITE being recalled as a witness in behalf of  
the contestants, was examined by Mr. VAN PELT,  
and testified as follows :

Q. You have been examined before?

A. Yes, sir.

Q. You have been frequently at the house of Dr. 1924  
Gates?

A. Yes.

Q. When Carlton did those things and used this bad  
language towards his mother, was he under the influence  
of liquor?

A. No.

Q. You were near to him and had a good opportunity  
of seeing and knowing?

A. A very good opportunity.

Q. How often did you ever see him under the influ- 1925  
ence of liquor?

A. Well, I saw him once.

Q. During what length of time.

A. During the time I was there in the Spring, sir ;  
eight or nine weeks I think it was.

Q. And this ill treatment towards his mother was con-  
tinuous, and when he was not under the influence of  
liquor?

A. Yes.

Q. Did Mrs. Gates ever interfere with the servants to 1926  
your knowledge?

A. No ; she did not have an opportunity while I was  
there ; she was not there.

Q. Did the servants complain of the treatment of Carl-  
ton?

A. Yes.

Q. To what extent?

A. Why, they sometimes came up, perhaps at night,  
and would go back the next day ; they would not stay  
but for a week or two at a time.

1927 Q. Tell us what Carlton's manner and treatment was towards these servants?

A. Well, he was very harsh and unkind; they could not suit him in cocking, and more especially in making coffee; he would have it made perhaps three or four times, before it would suit him.

Q. How often did you hear that?

A. Why, it was almost every morning.

Q. The trouble about the coffee?

A. Trouble about the coffee.

1928 Q. Where was Mrs. Gates then?

A. She was in New York.

Q. What else did Carlton find fault with about the servants?

A. About meats, and oysters, and different things like that; he was hard to suit—very hard to suit.

Q. Could they suit him at all?

A. Well, Mrs. Nesbit most always had to go down and see to things before she could get anything to suit him.

Q. Did you ever see him treat a servant improperly so that she would immediately leave the house?

A. Yes.

Q. When?

A. On one occasion.

Q. On what occasion?

A. Mrs. Gates sent up a girl from New York—a cook, and he rang the bell for her next morning, and she went up stairs; she knocked at the door.

The SURROGATE: Are you telling what you know or what somebody told you?

*Witness:* No; this is what I know.

Q. You were there and saw and heard what took place?

A. Yes, I was there; she knocked on the door, and he spoke very harsh, and said, come in; she opened the door on a jar and he says, "Come in;" she says no, she would not come in, and he cursed, and so the girl

went down stairs and said she was frightened, and would 1931  
not stay, that she was afraid the man was crazy.

Q. Did she leave the house immediately?

A. She left immediately—went that morning.

Q. Did you ever see Mrs. Gates have any trouble with  
servants in the house?

A. No, sir; I have never seen Mrs. Gates have any  
trouble at all.

Q. You have been there for years, off and on?

A. Yes.

Q. Did you ever know of her stinting the servants, 1932  
putting them on a small allowance, or starving them?

A. No; I never have.

Q. Never?

A. Never.

Q. Do you know of her keeping servants for a long  
time?

A. Yes; I know, last Winter, before Carlton came  
home, she had a girl eighteen months—I think, a cook,  
and the other girl she had a year; she got married from  
there—the up stairs girl. 1933

Q. Fix the time that you saw Carlton in liquor?

A. It was on a Saturday.

Q. What time in the day?

A. It was about six o'clock in the evening, just before  
he had dinner.

Q. Had he been to New York?

A. No; he had not been to New York; he was home.

Q. Well, where was Mrs. Gates?

A. Mrs. Gates was in New York.

Q. She was not at home? 1934

A. She was not at home.

Q. Then, he did not abuse her on that occasion?

A. Oh, no.

*Cross-examined by Mr. LYON:*

Q. What day did you go to the house this last time  
you were there?

A. March—I think it was the 4th or 5th of March.

Q. You left what day?

1935 A. In April.

Q. Did Doctor Upham attend Carlton during that time?

A. Yes.

Q. How long was it before that since you had lived there?

A. Oh, well, seven or eight years; I always visited there, and was up in February.

Q. I have not asked that; how long was it before you lived there as a servant before?

1936 A. I was not there as a servant.

Q. How long since you had lived there in that house before the period in March when you went there?

A. Eight years.

Q. What did you do when you were there before?

A. I sewed.

*Re-direct examination by Mr. VAN PELT:*

Q. Had you been to the house during that eight years?

1937 A. Oh, yes; I always visited it.

Q. You had not lived there during that eight years, but how often had you visited the house?

A. Well, sometimes I would go up, maybe, twice a year; most every Summer I would go and stay a week, or two weeks, or three weeks at a time.

Q. Did you have a good opportunity of seeing the household arrangements then?

A. Yes; I had a very good opportunity.

Q. You saw Mrs. Gates always at the head of the 1938 household?

A. Always; she always attended.

Q. Was she a competent housekeeper?

A. Yes; very much so indeed; she was always considered so—very good.

Q. Did you ever see anything that indicated want of capacity to conduct a household?

A. Not at all; no sir.

Q. Was she able to get around the house?

A. Always; very active.

Q. Up early in the morning ? 1939

A. Yes, sir.

Q. Overlooking everything ?

A. Yes, sir.

Q. And doing everything ?

A. Doing everything ; seeing to her girls, and everything.

(Signed) ESTHER E. WHITE.

MARTHA ANN NESBIT, being re-called as a witness in behalf of the contestants, was examined by Mr. VAN PELT, and testified as follows :

Q. Do you remember the subject of Carlton's removal from this trusteeship, being contemplated before his last sickness, in the family ?

A. Yes, sir ; I remember it.

Q. Did you communicate with your brother on that subject ?

A. Yes ; I presume so.

Q. By letter ? 1941

Mr. LYON : What had that to do with the case ?

Mr. VAN PELT : Only to show that the family considered the propriety of having Carlton removed from the trusteeship.

Mr. LYON : I object to it ; objection sustained.

Q. Did you see Carlton under the influence of liquor at any time, and if so, on how many occasions ? 1942

A. Only once.

Q. When was that ?

A. Last January.

Q. I will ask you whether when he treated his mother in the violent manner that has been testified to, he was under the influence of liquor ?

A. Never.

1943 Q. On the occasion when he was drunk, under the influence of liquor, in January last, did he illtreat his mother then?

A. No.

Q. You always lived with Mrs Gates, I understood you to say?

A. Yes.

Q. Did you ever see any want of capacity on her part properly to superintend the household?

A. No, I think she was an excellent housekeeper.

1944 Q. Did you ever see her have any trouble or difficulty in getting along with servants?

A. I never did until Carlton returned from Europe.

Q. Who made the trouble with the servants?

A. Why he made it.

Q. Has Mrs. Gates had any trouble since his death?

A. Not any since.

Q. How long would she keep the same servants, when he was absent?

A. I don't know,—sometimes eleven months, and sometimes a year or more.

(Signed) MARTHA A. NESBIT.

AMOS. W. GATES, being re-called as a witness in behalf of the Contestants, was examined by Mr VAN PELT, and testified as follows :

Q. On how many occasions did you see your son under the influence of liquor since his return from Europe last?

A. The only time when I ever saw him—when I thought 1946 he was under the influence of liquor—was in January, after his return from Europe, the last of December or the first of January; I do not remember exactly.

Q. Was that the occasion when he threatened to shoot you?

A. I don't know that he threatened to shoot me that day; I was told the next day that he then said if he had seen me he would have shot me.

Q. That was the night that you went to the medical meeting—the night that he came home from New York?

A. Yes, sir.

1947

Q. And during all the time of your being with him, you never saw him under the influence of liquor?

A. I never saw him when I thought he was under the influence of liquor but that time.

Q. Could you have discovered it if he was under the influence of liquor?

A. Well, I think I should know him well.

Q. On the occasions when he was walking up and down the piazza and muttering, did his conduct and his deportment, then indicate that he was under the influence of liquor?

A. Not at all; that is, it was very different from what I knew when I believed him to be under the influence of liquor.

Q. How was it different—state the difference?

A. When I saw him under the influence of liquor he was not boisterous; he was talkative and seemed rather silly—that was the tenor—his asking a good many questions—unimportant ones.

Q. Will you just examine this—Exhibit “No. 1” of this 1949 date handed witness—and state whether that is all in your handwriting—both pages?

Mr. LYON: I believe he has testified to that.

*Witness:* I should like to know certainly whether it is my handwriting or not.

Mr. LYON: You examined it once from beginning to end.

1950

A. I beg your pardon.

Mr. LYON: Did not you?

A. No, sir; I began to examine it and you said it was not for me to read.

Mr. LYON: I asked you the simple question whether the handwriting was yours?

1951 A. Yes sir ; and I looked at it and said I believed it was.

Q. You are acquainted with Hulbert's handwriting ?

A. Not much ; I do not think—I am not a judge of people's handwriting.

Mr. LYON : I will admit his handwriting.

[Mr. Van Pelt handed Mr. Lyon two papers, and asked him if he would admit that they were in Mr. Hulbert's handwriting.]

1952 Mr. LYON : That is his handwriting ; the paper which was the letter introducing Miss Palmer to Dr. Gates was placed in evidence, and marked contestants Exhibit " B " of January 27th.

Mr. LYON : This is not in Mr. Hulbert's handwriting, as is very evident to anybody who knows it ; it is a woman's handwriting.

Mr. VAN PELT stated that it was the list of leagattees.

1953 *Witness* : Who had been examining the letter marked Exhibit " No. 1 " of this date—this is my letter ; I wrote this letter to Dr. Hulbert.

(Signed) A. W. GATES.

Mr. Van Pelt handed Mr. Lyon another letter, which he acknowledged to be in Dr. Hulbert's handwriting, and it was offered in evidence and marked contestants Exhibit " C " of January 27, 1870.

Contestants rested.

1954

On motion, adjourned to Tuesday, February 8th, 1870.

J. M. MILLS,

*Surrogate.*

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JAMES R. WOOD, M. D., recalled as a witness in behalf of proponents, being examind by Mr. PRIME, testified as follows :

Q. Be kind enough to state what actually occurred at

the interview between yourself and Mrs. Gates during 1955 her son's last sickness, from the first to the last time you saw him?

A. I saw Mr. Gates several times, sir.

Q. What was the first occasion?

A. The first occasion, I think, was the first visit I made at Yonkers, which was (referring to memorandum) on August 12th, on a Thursday, sir; I am of the impression that she rode with me from the depot to Mr. Gates' house.

Q. State what occurred—what was said by Mrs. Gates 1956 and yourself at that time?

A. We talked over his illness, sir; I cannot remember specially what was said; I think that—I know that she was very anxious about him, sir, and she told me for the first time that she was not staying there, that it made Carlton very nervous, or something to that effect, and that she was in New York most of the time; I remember that; I have looked over that testimony (alluding to Mrs. Gates' testimony which counsel held in his hand.)

Q. You have looked over the testimony given by Mrs. 1957 Gates at the last hearing?

A. Yes, sir; and I noticed that she referred to some fruit.

Q. Referred to what?

A. That she had some fruit for him which she said she gave to me and told me that it would not answer for him to know that she had brought it; she wanted me to have it given to him or to see that he procured it without his knowing that she had been there, or that she had sent it or brought it; that is about all, sir.

1958

Q. Did you ask her at that time how much property Carlton had?

A. No, sir; that was on my next visit, in the cars going back to New York.

Q. Did you ask her how much property her sisters left?

A. On that occasion?

Q. Yes.

A. No, sir, not on that occasion; there was something

1959 said about them on Saturday, on the next visit, which was the day on which Mr. Gates proposed to make a will.

Q. Did you say on that occasion that you had saved her a great deal of property on one occasion?

A. I did not on that occasion say anything about it; it was merely a conversation with reference to her son's illness.

Q. And nothing in reference to property?

A. Nothing, sir.

Q. Was mentioned at that time?

1960 A. No, sir.

Q. Or with reference to his mental condition?

A. No, sir; there was, sir, on the next day.

Q. When was that?

A. That was on Saturday after my second visit—on Saturday the 14th—in the cars.

Q. Did you ask her at that time how much her sisters left?

A. I will tell you what transpired there; I have already stated it; It was on this occasion that Mr. Gates proposed to make a will, and I did not deem that he was in a condition to do it, because of the reasons I have given: that he was delirious because of the fever which he was suffering under.

Q. Doctor, state what occurred?

A. I am now coming to it.

Q. We will not open the case, I simply wish to get from you what actually occurred?

A. I said to her, "Mrs. Gates, your son is very sick," or something to that effect; I told her that he proposed to make a will and she became very much excited; she talked very fast; she said that he had a will, that he had made a will—she did not know why he wished to make a will—another one—and so on; she said "he beats all"; she then said he was out of his mind, he was crazy and she wanted me—she proposed that I should tell him to go to an asylum—recommended him to go to an asylum; I did not say that Carlton would shoot me or her, I did tell her that he was not in a condition to be talked to on that subject, neither did I see the necessity for it, or anything to that effect; I had no idea—

Q. Did you say on that occasion that he was crazy or 1963 insane?

A. No, sir, I did not; I have never said so; she said so, and I replied to her, "Mrs. Gates, he says you are insane," as I stated in my former testimony.

Q. Did you ask her how much property he had?

A. Then the subject dropped, and we were sitting together, and I asked her with reference to her sister's property; I attended her sisters, both of them; I attended her brother who died; I attended a nephew; I had seen a good deal of that family as well as of Mr. 1964 Nesbit and his family; I have seen more of them since for I have attended Mr. Nesbit's mother, and his sister and himself, since the aunts died; they have been at my office repeatedly, and I asked Mr. Nesbit in my office in reference to the result of a litigation that took place with reference to his aunt giving a clerk—I think he was a clerk, I do not think he was a lawyer—a clerk of Mr. De Witt, who did their business—

Q. A clerk in the office of Mr. De Witt?

A. Yes, sir.

1965

Q. This you asked Mrs. Gates?

A. No, sir; this did transpire; I am giving you the reasons why I asked the questions—why I took an interest in it; I did not know how much they left—I suppose it was none of my business, but I simply inquired of her; she said that she did not know—she could not tell; I think she said that, if she had a paper, she could tell; I said to her: "Mrs. Gates, I think that I was of some service there to you, because of this fact: this lady had given ten thousand dollars to this 1966 young man, and she told me that she wanted to make a will—that he was her friend, and that they were very kind to her; the father was kind to her—his father—this young man's father; madam," I said, "you have been very kind to him—he ought to appreciate it;" this was a general conversation, you know; well, I recommended to her not to make a will, unless she did so under the advice of her lawyer, Mr. De Witt, who had been the lawyer of their family—of the whole family, as I under-

1967 stood it—for a great many years, and she concluded that she would not do it; she did not do it, and the last time I saw her she had not made the will; but I had understood—how I do not know—that, if she had lived another day, she would have made the will.

Q. Did you state this to Mrs. Gates?

A. No, sir, I did not; I give the reasons now, as the matter has been referred to in such a way as to rather insinuate that I was interested in the estate.

Q. State what you did say to Mrs. Gates?

1968 A. I merely stated to her that I thought I had been of service to the family in saving them a good deal of money; she then said: "I don't think that you have; when we wanted you, we could not get you;" that was as a witness in this suit for the ten thousand dollars that I have referred to; "Well," I said, "Mrs. Gates, I have always lived in New York—I was born in New York—and you could have found me at any time; I have always been a busy man here;" and the conversation then dropped, and that is all that was said about it.

1969 Q. Did you tell her that you had attended the litigation?

A. Yes, I think I made an effort to do so, but it was postponed; I was there two or three times by subpoena, and by the request of Nesbit or Dr. Carlton Gates, and it was postponed from time to time, and I don't know whether I gave my written testimony or not; I am not certain about that; but I know I went several times with a view to give my testimony in the case.

Q. Do you recollect of anything else that transpired 1970 at that interview?

A. No, sir; I do not recollect that; I looked as if I would sink down through the ground when she told me, as I read in her testimony, that they had been looking for me for five years and trying to find me, and that a reward had been offered for me in carpets, old chairs, and so on.

Q. Did you ask her then how much property her son had?

A. I asked her.

Q. Did she tell you ? 1971

A. No, sir, she could not tell me, she did not know ; I will say further that she did say to me that the property he had he got from her—I understood her to say that.

Q. Is that all ?

A. I think that is about all.

*Cross-examined by Mr. VAN PELT :*

Q. Why did you advise her sister not to make a will unless it was drawn by Mr. De Witt, who was the lawyer of the family ? 1972

A. I have told you ; because I knew he was a friend of the family, at least I had heard so.

Q. And had the confidence of the family ?

A. I believe so.

Q. And you had confidence in him that he would not do anything improper, if he was advised with, in regard to the making of this will ?

A. I did not know Mr. De Witt at all—I knew nothing about him ; I was merely told by these maiden sisters that he had been doing business for their father. 1978

Q. You knew from the knowledge you had that he had been the lawyer of the family for years—that he possessed their confidence, and that he would not allow an improper will to be prepared ?

A. That was my idea ; I had no reason to recommend him.

Q. I ask you now why you did not take the same interest in Carlton Gates, and, when he told you that he wanted to make a will, why you did not advise him not to make a will without the knowledge of his family ? 1974

A. Well, I cannot tell you, sir ; I did not ; I will say another thing—but no, I have no right to.

Q. Certainly ; what is it you wish to say ?

A. In reference to telegraphing for Doctor Gates—when I saw his son, before he died, I asked his mother to do it, and she said it had been done ; I told Mrs. Gates that I thought his father should come home.

Q. On what day was that ?

A. That was the day he proposed to make a will.

1975 Q. What day was that?

A. (Referring to written memorandum.) I have the date here; it was on Saturday, the fourteenth of August.

Q. Saturday, the fourteenth of August.

A. Yes, sir; my second visit.

Q. Mrs. Gates' sister, whom you have referred to, was an old lady, was not she?

A. Yes, sir.

Q. About how old?

1976 A. I cannot tell you.

Q. Was not she over seventy years of age?

A. I should think she was in the neighborhood of seventy.

Q. And very infirm?

A. She was infirm.

Q. And in such a condition as to call for the supervision of her friends in the disposition of her property?

A. They ought always to have been with them; but they were most thoroughly and entirely alienated.

1977 Q. She was in a condition to call for the supervision and advice and suggestions of her family?

A. Yes, sir; her family would go there, but I do not think they saw her very often; I do not think that she would allow them to see her.

Q. And you had reason to believe that, if that will had been made at that time, her property would have gone in some other direction than to her family?

A. I have said so, sir, I believe; they told me she would never give them a penny.

1978 Q. You got this idea, then, from the family?

A. The sister, who died some years before the other, or some short time before, and this one, always protested that the family should never have one farthing; they were alienated—so much so, sir, that when they bought a plot in Greenwood I found that the deed was made out in my name, to prevent the Nesbit family and the Gates family from being buried near them, and I gave that gentleman (indicating Mr. Nesbit) the deed after they died.

that the family should never have one farthing ; they 1979 were alienated—so much so, sir, that when they bought a plot in Greenwood I found that the deed was made out in my name, to prevent the Nesbit family and the Gates family from being buried near them, and I gave that gentleman (indicating Mr. Nesbit) the deed after they died.

Q. And the service you reminded Mrs. Gates of having rendered her was with reference to her sister—that you had prevented her making the will ?

A. That I had postponed it. 1980

Q. Until it was too late ?

A. Until what ?

Q. Until she was not able to make the will ?

A. No, I did not say that.

Q. Well, you postponed the making of the will, and that was the result of it, that she died without making it ?

A. Well, yes ; I have every reason to believe that the will was made and was to be signed the next day.

Q. Why did not you render the same friendly service in the case of Carlton Gates, when he proposed to make 1981 a will ?

A. I found him there with his friend Mr. Hulbert, who Mrs. Gates told me she was very glad to have there ; that he was a near and dear friend of the family, and of course I had nothing to do with it ; it was a very different case.

Q. Mr. Lockman was the man who received \$10,000 ?

A. I do not remember the names.

Q. It was the clerk of Mr. De Witt ?

A. I understood that it was the clerk of Mr. De Witt. 1982

Q. He had got some \$10,000 from the old lady before, and you were fearful that if he drew the will he would get more ?

A. I was.

Q. You knew that he was not a relative of the family ?

A. I did not know anything about it.

Q. Did you believe him to be a friend of the family ?

A. I did not know anything whatever about him.

Q. You knew that Dr. Hulbert was not a relative of the family ?

1983 A. I knew from Mrs. Gates that he was a near and dear friend of the family.

Q. You know that he was not a relative of the family?

A. Oh, no ; I did not know anything about it.

Q. Did you know that the scheme of the will was to give him a large portion of the estate?

A. I did not know one word about it ; I have said so.

Q. If you had known it would you not, in the same spirit in which you advised Mrs. Gates' sister, have informed Mrs. Gates and the family of what was going on  
1984 with Carlton Gates.

A. I cannot tell ; I could answer that question better if the thing had transpired.

[Mr. Prime objected.]

Q. You believe that the will of Mrs. Gates' sister was prepared, although not executed?

A. I had reason to believe that it was, from her own statement.

1985 Q. Did you know that the person who drew that will, Mr. Lockman, was in the house the night before her sister died, for the purpose of having it executed?

A. I did not.

Q. Did you see him there?

A. I do not remember ; I saw him there repeatedly, and I saw his father there too, but I do not remember : it is a good while ago, and the thing had passed from my recollection.

Q. You saw the thing going on there, and used your  
1986 opportunity, so far as you had it in your power, to prevent it?

A. I did just what I have told you and nothing more : I acted as a friend of both ladies, as the sisters know ; I used to do more for them than a physician, and I will tell you why : a very favorite student of mine was a nephew, and lived with them, and he requested me always to do what I could for these maiden ladies ; I never received one cent for what I did other than my regular charge for my services, that was always paid.

Q. Carlton Gates was also a student of yours? 1987

A. He was.

Q. And you felt the same friendly regard for his parents?

A. I did; I knew very little about his parents; I do not want to be misrepresented in this thing; I have had nothing to do with it, directly or indirectly, more than I have told you; I am not interested in it; I do not care that [snaps his fingers] for the legacy given to me; pecuniarily it is nothing to me; they are pretty things, some of them, and the library—gentlemen who know me know 1988 that I have as fine a library as most people; I was surprised to find that he had remembered me, as I said when he told me he was going to do so; that is all there is about it; if this thing had been decided in my favor I would have been willing to have given it for any benevolent purpose rather than suffer the trouble and anxiety I have been subjected to; I do not want to have it thought that I was interested in the matter at all; I wish the thing was settled and out of the way.

Q. Suppose you do what you are able to do to have it 1989 settled; we will meet you in the same spirit.

A. I think that if you will—

Mr. PRIME: Is the Stenographer taking this.

Mr. VAN PELT: Yes, I think it is all evidence, and it is creditable to the Doctor's heart.

A. I think that if you will ask Mr. Lyon you will find that I have always been willing in reference to your last 1990 interrogation.

Mr. VAN PELT: I am happy of the opportunity to say that I do not think you were a party to that scheme.

*Witness:* I am very sorry that I ever knew anything about the matter.

(Signed) JAMES R. WOOD.



## EXHIBITS.

Contestant's Exhibit A,  
Of September 30, 1869.

SMALL CAPS indicate words stricken out. *Italics* denote interlineations.

Last Will and Testament of CARLTON GATES, of the Town 1998  
of Yonkers, in the County of Westchester, and State  
of New York :

I, Carlton Gates, the testator above named, being of  
sound and disposing mind and memory, but of feeble  
frame, and mindful of the uncertainty of life, do make,  
publish and declare the following as and for my last Will  
and Testament, that is to say :

*First.*—I desire and direct my executors, hereinafter  
named, or such one of them as shall duly qualify, to  
pay and satisfy out of my estate, all my just debts and 1999  
liabilities, and funeral and testamentary expenses, as  
soon as may be after my decease.

*Second.*—I desire and direct that immediately upon my  
decease, a careful medical inspection or examination of  
my remains, and a chemical analysis of the contents of  
my stomach be made with a view to ascertain whether I  
shall have been poisoned ; and in the event of a dis-  
covery of any evidences or indications of such poisoning,  
I instruct and direct my said executors, or such one of  
them as shall duly qualify, to forthwith take any and all 2000  
such steps as shall or may be requisite for the institution  
of criminal proceedings against the person or persons  
whom I shall have designated as the object or objects of  
my suspicion in the premises.

And I hereby authorize and direct my said executors  
or executor to pay and satisfy out of my estate, the ex-

- 2001 penses incurred by, for, or in consequence of such examination and analysis ; and in case such examination or analysis shall disclose probable grounds for my suspicions, I authorize and direct my said executors or executor to reserve out of my estate such sum (not exceeding TEN, *twenty-five* thousand dollars), as in the opinion of their or his legal adviser, may be needed to amply pay and satisfy all costs, counsel fees, and expenses attendant upon such aforesaid criminal prosecution ; said sum to be held by my said executors or executor
- 2002 in trust for, and to be, so far as necessary, by them expended in the payment of said costs, counsel fees and expenses as the same, or any of the same, or any part thereof, shall or may from time to time accrue ; any and all surplus or excess of said sum, so reserved, as shall remain in the hands of my said executors or executor after full payment and satisfaction of said costs, counsel fees and expenses, to form part of my residuary estate, and to be paid over to my residuary legatee hereinafter named. In case there shall be *at any time* any disagreement or difference of opinion between my *said* two executors *as to* REGARDING the *commencement, management, or determination of* the legal investigation or prosecution aforesaid, I desire and direct that Dr. James R. Wood, *one of my said executors*, shall have the controlling voice regarding the same.
- 2003

*Third.*—I give and bequeath to my friend Dr. James R. Wood, of New York City, all my paintings, bronzes, antique and ornamental glass, antique silver, weapons

2004 and arms, both Oriental and Mediæval ; photographs, engravings and views of Europe and the East, earthen and porcelain ware, my Circassian bracelet, composed of a variety of colored stones (which latter will be found, probably, in the possession of Rev. J. V. Hulbert, D. D., of White Plains) ; all pieces of carved wood, and, in short, each and everything composing or forming part of my “collection.” Also, my entire library and its black-walnut cases and furniture, as it shall stand at the time of my decease,

*Fourth.*—I give and bequeath to my particular friend 2005  
Mrs. Adeline E. Darling, wife of Charles Chauncey  
Darling the sum of ten thousand dollars.

*Fifth.*—I give and devise to Mrs. Annette Migy  
(widow), of the Village of Yonkers, the sum of ONE *five*  
hundred dollars.

*Sixth.*—I give and bequeath to my housekeeper, Jennie  
Morris Salt, as also to each of my servants, viz: Ann  
Fitzpatrick, Maggie Fitzpatrick, AND PETER HARVEY 2006  
HIGGINS, the sum of fifty dollars.

SEVENTH.—All the rest, residue, and remainder of my  
entire property and estate, both real and personal, of  
whatever nature and description and wheresoever situate,  
I give, devise and bequeath to my particular friend Rev.  
J. V. Hulbert, D. D., of White Plains.

*Eighth.*—

*Lastly.*—I hereby nominate, constitute and appoint my 2007  
said friends, James R. Wood, M. D., of Irving Place,  
New York City, and Rev. J. V. Hulbert, D. D., of White  
Plains, Westchester County, New York, the executors of  
this my will; hereby revoking all other or former wills  
by me made.

In witness whereof, I have hereunto set my  
hand and affixed my seal, this                      day  
of August, in the year one thousand eight  
hundred and sixty-nine.

[L.S.] 2008

Signed, sealed, published and de-  
clared by the above named testator,  
Carlton Gates, as and for his Last  
Will and Testament, to, and in the  
presence of each of us, who, at his  
request, and in his presence, and in  
the presence of each other, have  
hereunto subscribed our respective  
names and residences, as subscrib-  
ing witnesses thereto.

2009

**Contestant's Exhibit B,**

Of October 1st, 1869.

NEWPORT, *August 2d.*

DEAR MOTHER :

I am quite ill always, and God only knows when I shall recover from the evils your fiendish conduct has caused me.

I have left the hotel, and my address is as below. When you have occasion to write, get Mrs. Migy to direct your letters.

C. G.

At Mr. Wilson's Cottage, corner of Cottage and Redwood Streets, Newport, R. I.

Envelope post-marked "Newport, R. I., July 30th," and directed "Mrs. A. W. Gates, Yonkers, Westchester Co., N. Y."

2011

**Contestant's Exhibit C,**

Of October 1st, 1869.

YONKERS, *March 26th, 1869.*

MRS. GATES :

I sent you from the house at a moment when your harrowing presence was likely to prove destructive to the life of your son, already seriously in danger. My object was to avoid your dreadful influence during the most critical period. I hope the period of greatest danger is passed, and feel that I stand a chance of recovery if I can once rally from the state of prostration in which I am. Your sojourn in a boarding-house or private family can be productive of no ultimate good, and, in the present much diminished state of our income, I feel that I should make no disbursements without securing a *quid pro quo*. Since my departure for Europe last our income has been reduced, by the manœuver of Dr. Gates, and the non-fulfillment of his contract with you, at least \$1,300 each year, and last year there was a deficit from that particular source alone of \$1,920. Add

2012

to this the losses by dishonest tenants during the last 2013 two years, and there is a further deficit of \$3,500. Consider that I have now to pay the bills of two lawyers, and also of two physicians for attendance during my present dangerous malady. Consider the heavy taxation to which we are subject, and you will not find it difficult to comprehend that with all the economy possible we are living beyond our income. Since my return to this country in November I have not absented myself from home a single night. I have resided here from motives of sheer economy, and with desperate resolution have 2014 confronted your idiocy and your shameless and irresponsible conduct, until these, with a consciousness of your helpless condition and the difficulties of the future, tortured my mind until the high health and physical vigor I had brought home with me utterly departed and left me a prey to the first mortified influences. Better would it have been for me if I had taken the wings of the morning and fled to the uttermost parts of the earth.

Under these circumstances you will easily comprehend if I refused myself, from motives of economy, a residence 2015 apart from you—that which I well knew would prove my salvation—I cannot afford to support you in absence, unless some solid benefit is to accrue to you.

I have long been of the opinion that a few months passed in a hygienic and reformatory institution, such as a private asylum, might be of incalculable benefit to you, and render it possible for you in future years to be taken care of in your own home. The enforced leisure—the efforts at reflection that you would instinctively make, if you are capable of any—the regularity of life, and the 2016 wholesome influence of a mild and steady discipline—might develop in you, what most you lack, the elements of self-control, and return you to us a chastened and reformed woman. So persuaded am I of the necessity of such a course, that I am confident that no good physician can understand your case and not emphatically endorse my views. There was once a lady—the well-known Mary Lamb—subject to occasional paroxysms of insanity—when she felt her malady approaching, she

2017 always went of her own free will to an asylum, and there took up her residence. When the malady had ceased, she returned to her home. Why could you not go voluntarily to a private asylum for a few months. It is, after all, but a hygienic establishment, as is a water-cure, and one of which you have great need.

In conclusion, I am constrained to decline the supply of all moneys for your residence in New York, where you are deriving no benefit, and where, from all I hear, you are aggravating your peculiar ills. I shall be responsible  
2018 for no money that you may borrow, and shall furnish you no money after such necessary time as is necessary to the completion of your preparations for a return to Yonkers.

Millions for benefit—not a cent for nothingness.

C. G.

I want to get rid of this man. I sent for one a week ago, *well recommended and willing to make himself generally useful*. Pay any wages, for I *must* have a good one.

2019 Envelope post-marked "Yonkers, N. Y., 27th." "Mrs. Martha Gates, 35 West 14th St., New York."

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#### Contestant's Exhibit D,

Of October 1, 1869.

NEW YORK, 125 CROSBY ST.,  
Feb. 1st, 1859.

2020 A receipt for furniture which you authorized me to purchase, and the bill for which was presented some two months ago, I have the pleasure to enclose. After the letter received from me a week ago, it would be superfluous to state that the money was raised on my watch and pin now in pawn.

I cannot expect such people as yourselves to be at all sensible of the feelings with which decent people regard such transactions when forced upon them.

My food and room paid for, I have a surplus of \$20 a month.

If you can show me how this will pay for my clothes 2021 even, to say nothing of other expenses necessary to life, you may possibly prevent the sale of books, bronzes, pictures, engravings, furniture, &c., which I am determined shall instantly take place.

All shall go under the hammer, and, since my education and taste have been but fulcrums for your persecution, not a vestige of them shall remain in your house.

With scorn for you that you merit, and hatred that you have nurtured, I shall soon have done with myself or you.

2022

May God's heaviest curses light on you.

C. G.

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**Contestant's Exhibit A,**

Of December 3, 1869.

*Memoranda of Assets belonging to me at this date, August 21, 1869.*

I have bonds in the Safe Deposit Company of New York—bonds insured by them. Also in my safe, at the Safe Deposit Company, New York City, will be found my 2023 box containing Coupon Bonds of 1867.

Also, I have Registered Bonds, the value and date of which can be found out at the U. S. Sub Treasury. They amount to about nineteen thousand dollars, as I now recollect.

Also, twenty-seven thousand dollars stock of the American Exchange Bank; seven thousand dollars of said stock belongs to me, and twenty thousand dollars of said stock belongs to my mother; and this latter amount must be transferred to her name.

2024

There will also be found in said box the Certificates of Westchester County Bank Stocks, New York State Stocks, payable at the Manhattan Company's Bank; also, Croton Water Stock; all of which, together with the entire contents of said box, I desire that my two executors in person verify, each for himself, and in the presence of the other.

My mother's will, will be found in the Safe Deposit Company in New York City.

2025 My own will, dated August 19, 1869, together with the codicil, dated August , 1869, will be found in the Safe Deposit Company of New York City, deposited by my executor, Rev. J. V. Hulbert, D. D., to be by him taken from said deposit only upon the event of my death.

Dated August , 1869.

2026

**Contestant's Exhibit B.**

Of December 3, 1869.

*CODICIL to the Last Will and Testament of* CARLTON GATES:

I, CARLTON GATES, of the Village and Town of Yonkers, in the County of Westchester and State of New York, being of sound and disposing mind and memory, do make, publish and declare the following as and for a Codicil to my last Will and Testament,  
2027 which bears date the nineteenth day of August, one thousand eight hundred and sixty-nine :

Whereas, by my said will, I have given and devised to the Corporation of the Village of Yonkers my family residence in said village, with all and singular the premises connected therewith ;

And whereas I now desire to make said devise conditional, now I do hereby will and direct that the aforesaid devise to the Village of Yonkers be, and the same is hereby made conditional upon said property being de-  
2028 voted to and used for public purposes solely ; and that, in case said devise be not accepted by said " The Village of Yonkers " upon said condition, or in case, after said " The Village of Yonkers " shall have duly accepted said devise, the said property shall at any time cease to be devoted to and used for public purposes exclusively, then all right, title and interest of said " The Village of Yonkers," its successors and assigns, in and to said property, shall at once and forever cease and determine ; and that then and thereupon the title and fee of said

property shall pass to and vest in Rev. J. V. Hulbert, 2029  
D.D., of White Plains, his heirs or assigns.

In witness whereof, I have hereunto set my  
hand and affixed my seal, this            day  
of August, in the year one thousand eight  
hundred and sixty-nine.

Signed, sealed, published and declared by the above-  
named testator, Carlton Gates, as and for his Codicil to  
his last Will and Testament, to and in the presence of  
each of us, who, at his request and in his presence, and 2030  
in the presence of each other, have hereunto respectively  
subscribed our names and residences as subscribing  
witnesses thereto.

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**Contestant's Exhibit C.**

Of December 3, 1869.

**CODICIL.**

I, Carlton Gates, of the Village and Town of Yonkers,  
in the County of Westchester and State of New York, 2031  
being of sound and disposing mind and memory, do  
make, publish and declare the following as and for a  
Codicil to my certain last Will and Testament, made and  
executed by me on the nineteenth day of August, one  
thousand eight hundred and sixty-nine.

Whereas, in and by my said last Will and Testament,  
I did, among other devises and bequests, make a devise  
to the corporation of the "Village of Yonkers" of my  
family residence in said village, with all and singular the  
premises connected therewith ; 2032

And whereas I now desire to make said devise con-  
ditional, as hereinafter expressed ;

Now, therefore, in pursuance and furtherance of my  
said desire, I do hereby will and direct that the aforesaid  
devise in my said Will made to the said corporation of  
the "Village of Yonkers"

2033

**Proponent's Exhibit, No. 1,**

Of January 27, 1870.

WASHINGTON, March 25th, 1869.

Rev. Dr. HULBERT :—

VERY DEAR SIR :—Your very kind note of 22d instant is received. I am under great obligations to you for your intelligent and kind description of Carlton's case. I had a letter from Martha Ann. yesterday, dated 19th instant, but it gave me no definite idea of Carlton's real condition. Carlton is not of a scrofulous or consumptive temperament ; his ancestors, on both sides, are entirely free from that complaint. Moreover, I do not place much reliance on what Doctor Wood may say of the case. I think him a swell ; he was entirely mistaken in Carlton's case nine or ten year's ago, when he came home from Europe, with a bad cold, and consulted Doctor Wood, who made out a bad case of it—sent him to Clark, the pulmonest, in New York, to have his lungs examined, they found ripened tubercles in his lungs, sent him to Schooley's Mountain to spend the summer (if he should live so long), where he stayed two weeks and got quite over his cold, and went to Newport, and had a good time the rest of the summer.—The sequel of the case was that Wood charged him \$100, and I think Clark charged \$50.—And in William Waring's second son, both Wood and Upham made a similar mistake. I have always thought that Carlton represented his case worse than it was, for an ulterior object, and it may possibly be so now. I know he is accustomed to very sharp practice.

Might it not be very pleasant for him to go back to Europe as an invalid, for two or three years, with a large supply of money, which Mrs. G. could supply, if she would rent her house, and board in some cheap boarding-house, which she would willingly do for the sake of improving his health. I throw out these remarks incidentally ; we will let them pass for what they are worth. I know something of those matters. Now, as to the impropriety of my going to Yonkers to see Carlton, because he is ill, there can be no doubt.

2034

2035

2036

The simple fact of his knowing that I was in the house 2037 would irritate him beyond measure, hence I can do no good. You know that I have no influence there whatever.

You must remember a scene that took place at your house a few years ago, in which he was the principal; the bitterness of his feelings towards me have not abated since, so it is undoubtedly better that we seldom meet.

This is a terrible state of things, but it is utterly out of my power to render it any better while we all live. If 2038 Mrs. G. should live some years, I fear her situation may become even more deplorable than mine is.

Now, allow me to tell you a little about Washington: for a clergyman, you used to keep well posted in politics. Washington, as a city, is improving very much in the number and style of buildings. The public buildings are nearly completed; the Agricultural Department building, and the north wing of the Treasury, are just finished. In a few years they will build a new President's House, and a building for the Interior Department. The Winter 2039 has been very mild—almost no snow—and the public grounds are in full bloom, with early flowers in the open air. Several fine churches are being built; Doctor Boynton's (Congregational), and Doctor Newman's (Methodist) splendid structures, are just finished and occupied. Doctor Newman is from New Orleans—just settled here—a man of great learning and ability. I heard his first two sermons here—they were masterly efforts; the President—our President—and many of the distinguished, attend them. 2010

I go to the Senate, the House of Representatives, or the Supreme Court, almost every day. It is very interesting to study the characters, powers, views, and aspirations, of this multiform group of prominent men, all aspiring, most of them industrious, some incessant workers; but almost as great a diversity of talent as you would see at a general training. While there is much of the finest talent in the nation, there are some, both in the House and Senate, who have not the powers of

2011 even mediocre men. I would like to give you my views of individuals, but have not the space. "I am a looker-on in Bagdad." I would like to see and talk with you very much. Congress will adjourn in about a week or two, and I shall go to Ohio. Should always like to hear from you. Please remember me kindly to all your family.

Most sincerely, yours,

A. W. GATES.

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**Proponent's Exhibit, No. 2,**

Of January 27, 1870.

*Brooklyn, February 24, 1864.*

2042 Rev. V. M. HULBERT.

*Dear Sir :* I expect to leave to-morrow for the West, and am desirous to have you still continue your kindness in forwarding my letters, which you will please direct to Bristolville.

TRUMBULL & CO.,

*Ohio.*

I think of returning to Yonkers about the 20th of April. My health is much as when I saw you.

Wishing you and yours health and happiness,

2043 I remain truly yours,

A. W. GATES.

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**Proponent's Exhibit No. 3,**

Of January 27, 1870.

[**" B."**]

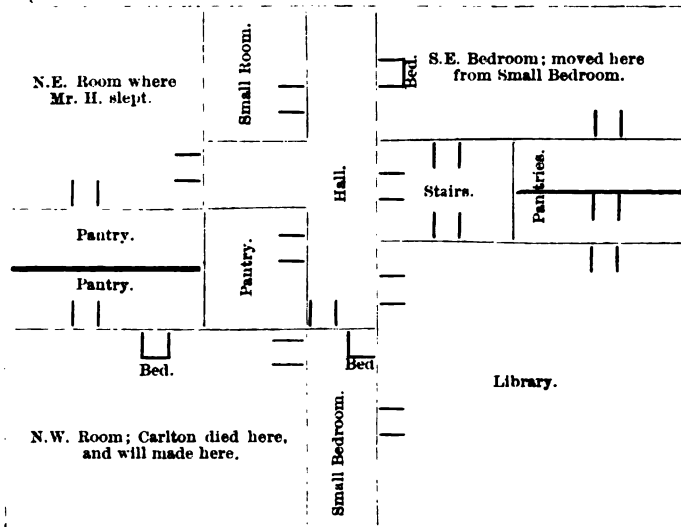
*January 9, 1864.*

2044 I, A. W. Gates, state as follows : I shall leave \$3,000 per annum, secured to Mrs. Gates, during her life. I have for some time intended to leave a similar arrangement for Carlton, and for the benefit of his children, should he leave any. But have abandoned the idea for the present.

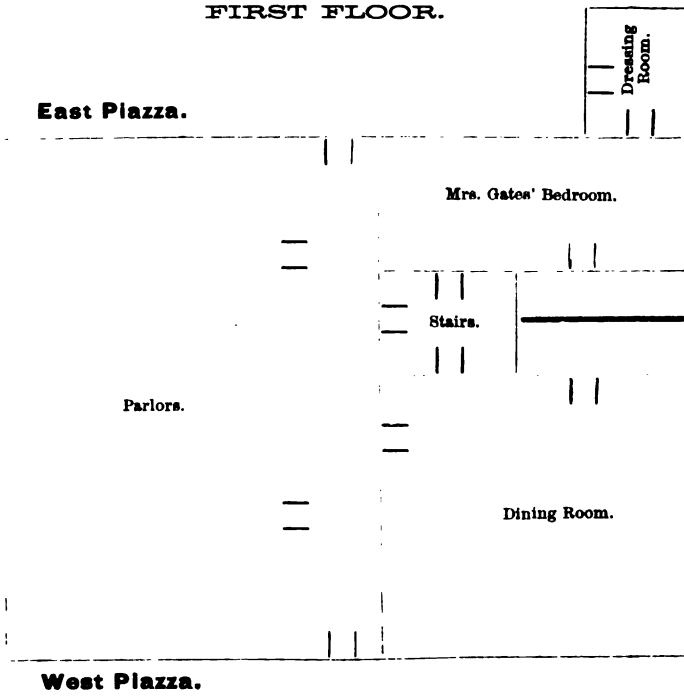
I have no will, and circumstances may determine whether I may leave one or not. When ever I may die, I wish to be decently and plainly buried at Yonkers, and would like Rev. Mr. Hulbert to be fully consulted regarding it, and also any inscription on the stone, which I wish to be plain and modest.

**Contestant's Exhibit A.**  
Of January 27, 1870.

**SECOND FLOOR.**



**FIRST FLOOR.**





**Contestant's Exhibit B,**  
Of January 27, 1870.

2045

WHITE PLAINS, N. Y., April 16, 1869.

Dr. CARLTON GATES.

*My Dear Sir:* Since receiving your first letter I have had an eye out to discover the desideratum of a good housekeeper. I think, possibly, the veritable individual has made her appearance in the person of Miss Palmer, whom I gave a letter of introduction to you, but on reflection concluded to write a little more at length to prepare you for her coming. I think she belongs to a breed of sensible women, and that she may make a good honest reliable person, suitable for governing servants, overseeing everything, knowing what constitutes a good meal, and capable of ordering it, and doing everything appertaining to good housekeeping. She is an old inhabitant of the Plains, where her father and family still reside. I think she may ask \$250 per year, which, perhaps, is as cheap as you can get an efficient person. I am not personally acquainted with her, but, from what I can learn, she is reliable. I am well acquainted with her sister, Mr. Gates, and informed her that it was a first-rate place for an efficient woman; that you were a gentleman of culture, refinement, &c.; something of an invalid, just now; that if she had the ability and disposition to please you, as I could if I were a housekeeper, she would find a first-rate place. Of course, I cannot warrant human nature, but leave her to be tested by experience, hoping for the best. 2046

Now, my dear sir, as the fine weather opens, permit me to advise an occasional ride, attended, at first, perhaps, by some of your own employés. The lady in question will probably call on you on Monday next. 2048

Wishing you a speedy recovery, and a happy domestic establishment, I am very truly your friend,

V. M. HULBERT.

2049

**Contestant's Exhibit C.**  
Of January 27, 1870.

YONKERS, December 20th, 1852.

CARLTON GATES :—

- MY DEAR SIR :—I think that during a friendly smoke in your "sanctum sanctorum," we both agree ! that now was the auspicious moment for my return to this early scene of "my toils, my feelings, and my fame." As to the latter, it was slightly overshadowed, it is true, in certain quarters, but in the main, by the great mass of the
- 2050 people, a truthful view was taken, and I could at any moment summon from them a crowd of brave hearts, not only from the people of my own immediate parish, but from the public generally. For to borrow a term from the great Hungarian, there is a "*solidarity*" of the people's rights, and wanton injustice done to one is felt by all. Among my kind and faithful sympathizers, I have always proudly reckoned your family. Your father, mingling here and there with the public, has not failed prudently to interpose his favorable sentiments, which
- 2051 your good mother has not scrupled with boldness to vindicate the right. I shall never forget their unchanging kindness, in which also the entire household have shared, including yourself, for although you were quite young on my coming to Ycnkers in 1843, and not far advanced when I left, yet it was grateful to my heart to find your spirit in so many respects congenial with my own, and your kind feelings flowing forth in sympathy. If Providence spares our lives, I shall hope hereafter for many a pleasant interview.
- 2052 All that I anticipated on returning, has thus far been more than realized. "Which way soever fortune inclines, thither turns the ways of men." The public sympathy is our favor, and instead of our church struggling desperately for a doubtful existence, the laboring oar is found in the hands of those who but recently were moving on with a favoring tide. At this moment there is not a pew to be rented, save one or two next the stoves, so that already are we agitating the subject of "lengthening our cords and strengthening our status."

Yonkers is evidently advancing with rapid strides in 2053 population and wealth ; e'er long it may boast a University of learning, and many may yet proudly boast of this as the mistress of their studies. The Lyceum is already opened ; Doctor Baird gave the "*Introductory*," his subject being, "*Calhoun, Clay and Webster*." A learned Greek, in native costume, has since held forth in very nearly an unknown tongue, besides which Mrs. E. Oakes Smith, on other evenings, has thrown much light on the subject of Woman's Rights. By the way, you had better look you out a wife as soon as possible, uncontami- 2054 nated by these enlarged views, "Woman's Rights," else by delay you may find no peace for your own rights.

Last evening (Sabbath) Doctor Bishop H. Hughes, in the Catholic Church of this place, enlightened our good people in the kindest possible manner, on the subject not of woman's rights, nor of the people's rights, but of "*the Churches rights*." After my own service I stopped for a few moments. He had advanced somewhat in the discourse, but I still heard sufficient, were I not a hopeless heretic, to turn my feet at once into "Mother Church." 2055 His positions were : "One Church, and that the Catholic (Roman) ; that Church had the promise of Christ's presence to the end of the world, and hence spoke or taught the truth as infallibly as did Christ himself. Whilst on the other hand the ministers of other denominations could not teach, they might expound to the best of their ability but were not infallible, and the people were left in the end to go home and judge for themselves, and hence he saw the "skiffs of men's imaginations floating wildly here and there on the ocean of varying opinion." In 2056 contrast with this, every Catholic peasant has the truth for his creed as much so as the learned Pontiff. So you see we are likely not to want for teaching here on any important subject.

But, after all, I had rather have *your* opportunity for instruction than *my own*. It was doubtless a trial for your parents to consent to your crossing the ocean, but, situated as you were, with means to travel, with nothing to hinder you at home, at your time of life, and above

2057 all with your education and discipline of mind, one of the finest and most desirable things for personal improvement you are now enjoying. I only wish that I were with you, and that together we could visit those historic places so abounding in the old world. You are just now in gay, volatile France, and doubtless will look upon Napoleon III., who, by the way, judging from his success, is not so great a fool, nor so much to be despised as many would have us believe. Of course you will visit Italy and its thousand wonders. Now, you are there, 2058 and may never repeat the journey; you might, perhaps, tarry a little longer than you anticipated, to profit by the numerous objects within your reach. What say you to sending over to me a few notes by the way, to be published for the happiness of your friends and the public, in the "Youkers Herald." You are a physician, and therefore have a great advantage in preserving and watching over your bodily health. And of course you would not expect to receive a letter from a friend, in the shape of a Dutch Dominie, without the wholesome advice to not 2059 only take care of physical, but also of moral health pertaining to the nobler part of man. You have the advantage of making your tour with principles formed, and yet at no age are we beyond temptation, and therefore should practice eternal vigilance as the price of our security. You will, of course, pardon this well meant, though, perhaps, ill-timed homily, and believe me, very sincerely,

Your friend,

V. M. HULBERT.

**Proponent's Exhibit A,**

2060

Of March 18, 1870.

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 AMOS W. GATES,

to

CARLTON GATES.

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This Indenture, made the thirty-first day of December, one thousand eight hundred and sixty-three, between 2061 Amos W. Gates, of the Town of Yonkers, Westchester County, New York, of the first part, and Carlton Gates, of the same town, of the second part, Whereas, by a certain Deed of Trust, bearing date the thirty-first day of March, one thousand eight hundred and sixty, recorded in the Register's Office of Westchester County, in Liber 431 of Deeds, page 29, &c., April 4, 1860, the said Amos W. Gates conveyed to Ann Nisbet, as trustee, certain lands and premises therein described, situate in the said Town of Yonkers, with the dwelling-house and improve- 2062 ments thereon, and all plate, pictures, books and furniture then on the said premises which belonged to the said Amos W. Gates, to be had and holden by the said Ann Nisbet upon trust, to apply the net rents, issues and profits of the said trust estate to the sole and separate use of Martha Gates, wife of said Amos W. Gates, during her life, with certain limitations over of the capital of said trust estate upon her death, as by said deed or the record thereof will more fully appear. And whereas by a certain other Deed of Trust, bearing even 2063 date with, and made and executed by and between the same parties as the one last mentioned, it is among other things provided that if the said Martha Gates should at any time thereafter during the natural life of the said Amos W. Gates, except with his consent, mortgage, sell, assign, or convey the lands and premises so conveyed and assigned in trust for her as therein aforesaid, or the rents, issues and profits thereof, or the annual sum of three thousand dollars in said last mentioned

2064 Trust Deed mentioned, or any part thereof, by anticipation, then, and in such case, these presents and the trusts thereby created should become void ; and thereupon the said Ann Nisbet, her heirs and assigns, should re-convey the said lands and premises to the said Amos W. Gates, his heirs and assigns ; and the said lands and premises should thenceforth be freed and absolutely discharged from all and every the trusts therein expressed and contained, as by the said last mentioned Deed of Trust, reference to which is hereby made will more fully appear.

2065 Now this Indenture witnesseth, that the said party of the first part in consideration of the sum of one dollar to him in hand paid by the said party of the second part, at and before the ensealing and delivery of these presents, and for other considerations, him thereunto moving the receipt, of all which is hereby acknowledged, hath granted, released, quit-claimed, assigned and set over, and doth hereby grant, release, quit-claim, assign and set over unto the said party of the second part, his heirs and assigns, forever, all the estate, right, title, interest, 2066 possibility of interest, claim and demand, whatsoever, as well equitable as legal, which the said party of the first part now has or is entitled to, or but for the making of this Indenture may or might at any time hereafter have claim or be entitled to, either in virtue of any of the conditions or provisions of the Deed of Trust, secondly above-mentioned or referred to, or by any other right or title, or in any other way or manner whatsoever, of, in, and to, or upon all and singular the premises mentioned in the Deed of Trust, first above referred to, and which 2067 are described as follows, that is to say, all that piece or parcel of land, situate, and being in the Village and Town of Yonkers, County of Westchester, and State of New York, bounded as follows, viz :

Beginning on the easterly side of the old Albany Post Road, now South Broadway, at the northwesterly corner of land now or late of William Radford ; thence along said land of William Radford north, eighty-one degrees and forty-five minutes east, four hundred and thirty-eight feet to land now or late of Elias Whipple ; thence

north, eight degrees and forty-five minutes west along 2068  
the land of said Whipple and Doctor Burnett, seventy-eight feet ; thence north seventy-five and one-quarter degrees east, along the land of said Burnett two hundred and eighty feet, to Mechanic Street, north thirty and one-half degrees west, one hundred and fourteen feet, to land of Stephen Lyons ; thence southwesterly ninety-eight feet to the southwesterly corner of said Lyon's land ; thence north fifty-nine and one-half degrees east, sixteen feet along said Lyon's land to land of Robert P. Gettey ; thence along the rear of said 2069  
lot and lands of William Brown, jr., and W. Simmon's and John Gafney (first) north forty-one and three-quarters degrees west, one hundred and two feet ; thence north, forty-two and one-quarter degrees west, one hundred and sixty-three feet to land of James Bashford ; thence south sixty-one degrees and ten minutes west ; twenty-seven feet to the southwest corner of said Bashford's land ; thence north, thirty and one-half degrees, west, forty-five feet along said Bashford's land to land of Jeremiah Robbins ; thence south sixty-three and one- 2070  
quarter degrees west, along land of said Robbins, Parsons and others, one hundred and twenty-three feet, to the southeasterly corner of lands of Horatio S. Gates ; thence along the rear of said Gate's land north, forty-six and three-quarters degrees west, one hundred and forty-three and one-half feet to the aforesaid South Broadway ; thence along Broadway, first, in a southwesterly, then in a southeasterly direction, five hundred and eighty-three feet to the place of beginning, all the above mentioned lines running where the fences stood at the time 2071  
of the execution of the first mentioned Trust Deed, containing nearly six acres, more or less, together with all houses and buildings on the said land, with the appurtenances, and the rents, issues, and profits thereof, and of, in, to or upon, all the plate, pictures, books, and furniture, which at the time of the making of the said first mentioned Trust Deed, were on the said premises therein described, and which then belonged to the said Amos W. Gates—

2072 To have and to hold unto the said party of the second part, his heirs, representatives, and assigns forever. In witness whereof, the parties aforesaid, have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered.

A. W. GATES. [L.S.]

2073 The following alterations being made before execution, viz: on first page "fifty" erased, and "sixty" written over on third page; "near" erased and "now" written over on fourth page; "five" twice substituted for "four," and "East" substituted for "West;" on last page thence altered to then.

In presence of—

CHAS. F. SOUTHMAYED.

STATE OF NEW YORK, }  
City and County of New York, } ss.

2074 On this thirteenth day of January, one thousand eight hundred and sixty-four, before me personally came Amos W. Gates, to me known to be the individual described in, and who executed the foregoing deed, and acknowledged to me that he had executed the same.

DANIEL J. NOYES.

*Notary Public, New York City.*

STATE OF NEW YORK, }  
City and County of New York, } ss.

2075 I, Henry W. Genet, Clerk of the City and County of New York, and also Clerk of the Supreme Court, for the said City and County, being a Court of Record, do hereby certify, that Daniel J. Noyes, whose name is subscribed to the certificate of the proof as acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment a Notary Public, in and for the City and County of New York, dwelling in the said County, commissioned and sworn, and duly authorized to take the same, and further, that I am well acquainted with the handwriting of such Notary,

and verily believe that the signature to the said certifi- 2076  
cate of proof or acknowledgment is genuine. I further  
certify, that said instrument is executed and acknowl-  
edged, according to the law of the State of New York.

In testimony whereof, I have hereunto set my  
[L.S.] hand, and affixed the seal of the said Court  
and County, the 14th day of January, 1864.

H. W. GENET,  
*Clerk.*

[One stamp U. S., 5 ; Internal Revenue, 5 ; five cents, 2077  
5 ; Inla. Exchange, 5 ; H. W. G., January 14, 1864.]

A true copy of the original deed and acknowledgment  
thereof, and Clerk's certificate (with U. S. stamp). Re-  
corded October 18th, 1864, at 10 A. M.

S. S. MARSHALL,  
*Register.*

STATE OF NEW YORK, }  
County of Westchester. } ss.

I, Stephen S. Marshall, Register of Deeds, in and for 2078  
the County of Westchester, do hereby certify, that I  
have compared the foregoing copy of deed, with the  
original record thereof, remaining in my office, and that  
the same is a correct transcript thereof, and of the whole  
of such original as the same is recorded in Liber. 548 of  
deeds, page 171.

In testimony whereof, I have hereunto set my  
[L.S.] hand and affixed the seal of my office, this  
day of , A. D., 1869.

[Internal Revenue, 5 cents, cancelled.]

STEPHEN S. MARSHALL.  
*Register.*

'9

**Proponent's Exhibit B,**

Of March 18, 1870.

ANN NISBET

*to*

CARLTON GATES.

An Indenture, made the thirteenth day of May, one thousand eight hundred and sixty-four, between Ann Nisbet, of the Town of Yonkers, in the County of Westchester, of the first part, and Carlton Gates, of the same place, of the second part, Whereas by a certain Indenture or Deed of Trust, bearing date the thirty-first day of March, one thousand eight hundred and sixty, and recorded in the Register's office of Westchester County, in Liber 431 of Deeds, page 29, &c., April 4, 1860, Amos W. Gates did grant and convey in fee-simple unto the said Ann Nisbet, as trustee, all that piece or parcel of land, situate, and being in the Village of Yonkers, and Town of Yonkers, County of Westchester, and State of New York, bounded as follows, viz : Beginning on the easterly side of the old Albany Post Road, now South Broadway, at the northwesterly corner of land of William Radford ; thence along said land of William Radford north, eighty-one degrees and forty-five minutes east, four hundred and thirty-eight feet to land of Elias Whipple ; thence, north, eight degrees and forty-five minutes west, along the land of said Whipple and Doctor Burnett, seventy-eight feet ; thence north, seventy-five and one-quarter degrees east, along the land of said Burnett, two hundred and eighty feet, to Mechanics' Street, north, thirty and one-half degrees west, one hundred and fourteen feet, to land of Stephen Lyons ; thence, southwesterly, ninety-eight feet, to the southwesterly corner of said Lyons' land ; thence, north, fifty-nine and one-half degrees east, sixteen feet, along said Lyons' land to land of Robert P. Getty ; thence, along the rear of said lot and lands of William Brown, Jared W Simmons, and John Gaffney (first)

north, forty-one and three-quarters degrees west, one hundred and two feet ; thence north, forty-two and one-quarter degrees west, one hundred and sixty-three feet, to land of James Bashford ; thence south, sixty-one degrees and ten minutes west, twenty-seven feet to the south-west corner of said Bashford's land ; thence north, thirty and one-half degrees west, forty-five feet along said Bashford's land to land of Jeremiah Robbins ; thence south, sixty-three and one-quarter degrees west, along land of said Robbins, Parsons and others, one hundred and three feet to the southeasterly corner of land of Horatio S. Gates ; thence along the rear of said Gates' land north, forty-six and three-quarter degrees west, one hundred and forty-three and one-half feet to the aforesaid South Broadway ; thence along said Broadway (first) in a southwesterly, then in a southeasterly direction, five hundred and eighty-three feet to the place of beginning ; all the above lines run where the fences now stand, containing nearly six acres, more or less, and the plate, pictures, books and furniture, then in said premises, which belonged to the said Amos W. Gates, to be had and holden by the said Ann Nisbet upon the trusts therein declared which were in substance to apply the rents, issues and profits of such trust to the separate use of said Martha Gates during her life, and upon her death to convey, assign, and dispose of the trust property to such persons and for such estates as the said Martha Gates shall by will direct and appoint, and in default of such appointment to the heirs at law of said Martha Gates, as by the said Indenture, or the record thereof, as aforesaid, will more fully and at large appear. And whereas the said Ann Nesbit, and the said Martha Gates did recently present to the Supreme Court of the State of New York their certain petition, bearing date January 13th, 1864, and duly verified, whereby the said Ann Nisbet did resign her trusteeship under the said deed of trust, and the said petitions prayed that such resignation might be accepted by the said Court, and that the said Carlton Gates might be appointed as such trustee in her place and stead, and sought for certain other orders and directions in the

2087 premises, as by said petition in reference therunto  
 being had will appear, annexed to which petition was a  
 consent of said Amos W. Gates to the granting of the  
 prayer thereof, and a consent of said Carlton Gates to  
 become such substituted trustee, and likewise a supple-  
 ment to said petition, signed by said Martha Gates, and  
 verified by her on the 28th day of March, 1864. And,  
 whereas, upon the said petition, an order was duly made  
 at a Special Term of the Supreme Court, held at the  
 City Hall, at the City of Brooklyn, in the County of  
 2088 Kings, on the 23d day of May, eighteen hundred and  
 sixty-four, before the Honorable John A. Lott, a Justice  
 at said Supreme Court, whereby the aforesaid resigna-  
 tion by the said Ann Nisbet, of her trusteeship under  
 the deed of trust aforesaid was accepted, and it was  
 further ordered that the said Carlton Gates be, and he  
 was thereby substituted and appointed trustee under  
 said trust deed, in the place and stead of Ann Nisbet,  
 and with the like estate powers and duties in all respects  
 as those upon, and with which the said Ann Nisbet had  
 2089 theretofore been such trustee, and it was further directed  
 in accordance with the prayer of said petition, and at  
 the accompanying consent of said Amos W. Gates, that  
 no security be required from Carlton Gates as such sub-  
 stituted trustee, and it was thereby further ordered that  
 the said Ann Nisbet forthwith convey, assign, and deliver  
 over the said trust estate to said Carlton Gates, to be  
 had and holden by him as such substituted trustee, with  
 the like estate powers and duties, and subject to the limi-  
 tations upon which the said trust property had been  
 2090 theretofore held by said Ann Nisbet, as trustee as afore-  
 said, and that upon such conveyance, assignment and de-  
 livery over to the said Ann Nisbet, he and she was thereby  
 discharged from all farther liability or accountability for,  
 or in respect of the said trust or trust estate, which said  
 order has been duly entered in the Clerk's office of the  
 Supreme Court, in the County of Westchester, as by the  
 said petition and accompanying papers now on file in  
 the Clerk's office of Westchester County, and the said  
 order thereof recorded as aforesaid, will more fully and

at large appear. Now this indenture witnesseth that the 2091  
said Ann Nisbet, in pursuance of, and in obedience to the  
above recited order of the Supreme Court, and in consid-  
eration of the premises, and of one dollar to her in hand,  
paid by the said Carlton Gates, at and before the enseal-  
ing and delivery of these presents, the receipt whereof is  
hereby acknowledged, hath granted, conveyed, assigned  
and set over, and by these presents doth grant, convey,  
assign and set over, unto the said Carlton Gates, all and  
singular the said real estate, situate in the town of  
Yonkers, which was conveyed to the said Ann Nisbet by 2092  
Amos W. Gates, by the above recited trust deed of  
March 31st, 1860, with the appurtenances thereof, and  
all and singular the trust estate and property, whatso-  
ever which was vested in the said Ann Nisbet, by or  
under the said last mentioned trust deed, to have and to  
hold the same unto the said Carlton Gates as such sub-  
stituted trustee, in place of said Ann Nisbet, under and  
in accordance with the above recited order of the  
Supreme Court, with and subject to the like estate,  
powers and duties and limitations, as those upon and 2093  
with which the said trust estate and property has been  
hitherto held by the said Ann Nisbet, as trustee as afore-  
said, and the said Carlton Gates doth hereby accept the  
said trust as successor of said Ann Nisbet.

In witness whereof, the parties aforesaid have  
hereunto interchangeably set their hands and  
seals, the day and year first above written.

ANN NISBET. [L.S.]

Sealed and delivered in the  
presence of—

J. ROMAINE BROWN, Jr.

ANN NISBET.

2094

Three stamps attached (each) 5, 5, U. S. Internal Rev-  
enue five cents, 5, 5, agreement June 2d, 1861.

STATE OF NEW YORK, }  
City and County of New York, } ss:

On the second day of June, in the year one thousand  
eight hundred and sixty-four, before me personally came

2095 Ann Nisbet, of the town of Yonkers, Westchester County, State of New York, to me known to be the individual described in, and who executed the foregoing instrument, and acknowledged that she executed the same.

[L.S.] J. ROMAIN BROWN,  
*Notary Public, in and for the City  
 and County of New York.*

STATE OF NEW YORK, }  
*City and County of New York,* } ss :

2096 I, HENRY W. GENET, Clerk of the City and County of New York, and also Clerk of the Supreme Court for the said City and County, being a Court of Record, do hereby certify that J. Romain Brown, whose name is subscribed to the certificate of the proof, or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment, a Notary Public, in and for the City and County of New York, dwelling in the said City, commissioned and sworn, and duly authorized to take the same ; and further,  
 2097 that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof or acknowledgment is genuine. In testimony, whereof, I have hereunto set my hand and affixed the seal of the said Court and County, the 24th day of October, 1861.

[L.S.] H. W. GENET,  
*Clerk.*

A true copy of original deed and acknowledgment thereof, with Clerk's certificate attached. Recorded May  
 2098 8th, 1866, at 10:30 A. M.

S. S. MARSHALL,  
*Register.*

STATE OF NEW YORK, }  
*County of Westchester,* } ss :

I, STEPHEN S. MARSHALL, Register of Deeds in and for the County of Westchester, do hereby certify that I have compared the foregoing copy of deeds with the original record remaining in my office, and that the same is a correct transcript thereof, and of the whole of such origi-

nal as the same is recorded in Liber 593 of Deeds, 2099 page 345.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, this day of , A. D., 1869.

[U. S. Internal Revenue,  
5 cents, cancelled.]

[L.S.]

STEPHEN S. MARSHALL,

Register.

2100

### Proponent's Exhibit C.

Of March 18, 1870.

I, MARTHA GATES, of the town of Yonkers, in the County of Westchester and State of New York, being of sound and disposing mind and memory, do make, publish and declare this instrument to be my last Will and Testament.

*Item.*—I do hereby give, devise and bequeath all the property, real, personal and mixed, or any interest there- 2101 in, either legal or equitable, of which I may be seized or possessed at the time of my death or which I am or may be entitled to dispose of or appoint by will to my beloved son, Carlton Gates, if he be living at the time of my death, to be held by him in fee-simple and absolutely ; and if he be not living at the time of my death, I do give, devise and bequeath said property to such person or persons as he, the said Carlton Gates, by his own last will and testament, or any codicil thereto, may have designated by his there expressed wish as inheritor or in- 2102 heritors of said property, under such conditions, in such manner, and in such proportions as he, the said Carlton Gates, may have therein prescribed, and in default of such designation or appointment, by the said Carlton Gates, or so far as such designation or appointment shall fail to be effectual, I do give, devise and bequeath said property to the widow and the legitimate issue of said Carlton Gates, if such there be, on the same conditions and in the same proportions that the law would have as-

2103 signed it them had he himself died, seized and possessed of said property intestate ; and should said Carlton Gates not be living at the time of my death, then *in default of wishes expressed or dispositions made in his own last will and testament*, and in default further of the existence of any widow or legitimate issue of him ; then said property shall go and descend in equal shares to any of his *illegitimate issue*, if such there be, whom he may have recognized by formal and attested act.

I appoint my son Carlton Gates to be executor of this  
2104 my last will, hereby revoking all former wills by me made.

In testimony I have hereunto set my hand and seal this tenth day of May, one thousand eight hundred and sixty-five, placing here my hand and seal in duplicate.

MARTHA GATES. [L. s.]

On this tenth day of May, one thousand eight hundred and sixty-five, the above-named testatrix, Martha Gates,  
2105 in our presence subscribed and sealed the foregoing instrument, and declared the same to be her last Will and Testament ; and we thereupon at her request and in her presence, and in the presence of each other have hereunto subscribed our names as attesting witnesses.

CHAS. C. DARLING,

40 Union Square, New York.

ADELINE E. DARLING,

40 Union Square, New York.

## ARGUMENT OF MR. VAN PELT.

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MAY IT PLEASE YOUR HONOR :

I think I may safely say, that a more interesting and important case has never arisen in this Court than the one now before it.

The amount involved, the character and position of the parties to the controversy, and the extraordinary facts developed by the evidence, fairly entitle it to rank among the celebrated causes of the day.

Before considering the case in its legal aspects, I propose to take a brief review of the history of the principal actor in this domestic drama, who has forever disappeared from this earthly stage, and whose last earthly act is the subject of the present investigation.

CARLTON GATES was an only son. His parents were in comfortable, if not affluent circumstances, and were enabled to give him a superior education. He went through the usual academic and collegiate course ; after which he entered upon the study of medicine, and graduated at the Medical University of the City of New York, in the year 1852, at the age of twenty-four years.

He was thus early in life fitted with a profession, and qualified to take a useful and honorable station in society. His parents had performed their whole duty toward him, and always treated him with the utmost kindness and affection. His natural talents were of a high order, and his relatives and friends confidently predicted for him a successful and distinguished career. But he showed no disposition to turn to practical account the qualifications he possessed. His ideas and tastes run in a different direction altogether. He seemed to lack the ambition so common—so al-



vain did he hold out to him the tempting inducement, that, if he would only try and do something for himself, for every thousand dollars he earned he would give him another thousand, and, eventually, transfer to him his whole practice. No; he would listen to nothing of the kind. He had never intended to perform the drudgery, as he called it, of a physician; he had merely acquired the science as an accomplishment.

After lounging away some months at home, during which his demands for money had continually increased, Carlton was seized with a desire to travel. He sailed for Europe and spent several years in travelling through its different countries, defraying his expenses entirely with the means drawn from his parents. In addition to his ordinary and necessary expenditures he spent large sums of money in the purchase of relics of various kinds, of no practical use, and of but little intrinsic value. Indeed, he seems to have settled down into a curiosity hunter, going about from place to place, buying whatever struck his fancy as rare and curious without regard to cost or his ability to afford them. He expended in all, according to his own statement, for his collection of paintings bronzes, statuary, and articles of virtù, some of which possess some merit, but most of which, as the counsel for the executors says, are mere "traps," upwards of \$30,000; every dollar of which was wrung from his parents. This money he was in the habit of obtaining from his father by threats and acts of violence; from his mother, by means of coaxing, persuasion, and appeals to her affection.

On his return from his first visit to Europe, he again took up his residence with his parents. He led the same indolent aimless life, and pursued the same unnatural conduct and treatment toward his father. He soon got tired of home, and again went to Europe. On this occasion he spent some five or six years there, following with increased vigor his old and only employment of curiosity gathering and money spending. On his return from this trip he again made his head-quarters at the homestead in Yonkers, making excursions of pleasure throughout the country, whenever and wherever his caprice might take him; all the peculiarities and eccentricities of his earlier life had become more apparent and more settled and

confirmed ; difficult to get along with before, he now became absolutely unmanageable.

His father, down to this time, had pursued the even tenor of his ways. He was unremitting in the discharge of the arduous duties of his calling. Year after year in Summer's heat and Winter's cold, by day and by night, through storm and tempest, regardless of self, he attended at the bed-side of the sick and dying ; restoring to health such as were not beyond the reach of human skill ; alleviating the sufferings and comforting those appointed to die. For years there was hardly a critical case occurring in any part of our County but that Doctor Amos W. Gates was called in, and always with advantage. His name had become a household word throughout its entire length and breadth.

His personal and social character were as estimable as his reputation as a physician was eminent. His name was without a reproach. Upwards of twenty years ago, when the Village of Yonkers was a mere hamlet, he purchased the plot of ground upon which he erected the family mansion. He superintended its construction in person ; he laid out the grounds, and planted the trees with his own hands ; he fitted it up with all the conveniences and luxuries of a first-class residence. Here he hoped to live and here he hoped to die. And well did it harmonize with his sedate and stately character ! It was just such a place as any one would expect such a man to create for his home. By common consent he was esteemed worthy of it ; and it was the common wish that he might long live to enjoy it ; and but for the strange—the unaccountable conduct of his own offspring, he would never have left it.

After this second return from Europe, Carlton, in the language of some of the witnesses, ruled at home with an iron hand. He would brook no restraint or denial from his father whatever might be the nature of his demand. Every sentiment of gratitude, of filial love, respect and duty for him seems to have been obliterated from his nature—if, indeed, he ever had any. He exhibited but one feeling toward him and that was **HATRED**, the most inveterate and malignant **HATRED**. He constantly heaped upon him the most vile and outrageous abuse ; without the slightest provocation he would

threaten to shoot him down as a dog. In the dead hour of night he would break into his bed-room and attempt to strangle him in his sleep. In short the demoniac spirit of all evil seemed to have taken complete possession of him, at least so far as this parent was concerned, and all because he would not yield up to him his last dollar—to be squandered.

Of course, this state of things could not forever continue. The father and son must separate; and the only question with the father was, who should go. His situation had become one of the most dreadful anguish and misery; ruin to his business, his fortune and his happiness stared him in the face on every hand. If he remained at home he must have his son apprehended as a criminal or a madman. If he went forth, he must renounce his home and everything that rendered life dear and desirable to himself. But he must choose one alternative or the other. With a devotion to the welfare of his family, and with a spirit of self-sacrifice, almost without a precedent, he adopts the latter course.

He conveys the homestead, which he had acquired by his own industry, in trust for the use of Mrs. Gates during her life, empowering her to devise it by her will to whom she wished. He settles upon her an annuity for her support, and with the small remnant of his fortune, barely sufficient to procure for himself the necessaries of life, with his three score and ten years upon his shoulders, he goes forth a houseless, homeless wanderer in the world, with every earthly hope blasted, and no resting place in prospect but the grave! And yet where is the person living, who has ever heard the first word of anger or resentment fall from his lips toward the author of all his woes and miseries, or a single murmur of complaint at his unhappy lot?

Carlton having brought about this, to him, most satisfactory consummation, remains with his mother in possession of the homestead. He soon manages to get into his hands all the property belonging to her, derived from whatever source, and he lives like a lord. And here I would say, that the title of "Doctor," was never applied to him until after his decease, and by interested parties, for the purpose of giving him a character and importance to which he was not entitled. He was always known as *Carlton Gates*.

"DOCTOR GATES" was universally understood to be his father.

In a short time he again becomes surfeited with home enjoyments, and he sets out upon his third and last trip to Europe. After an absence of two or three years, spent in the same old way, he returned in the month of November preceding his death. There had been no material change in the family arrangements during this interval. He finds his mother, his aunt and her daughter living there together, as they always had. He had never shown any dislike toward these relatives, however strong his antipathy was toward his father. He soon begins to show symptoms of failing health. He becomes exceedingly irritable and irascible. He receives frequent visits from the Rev. Dr. Hulbert, who is closeted with him a whole day at a time in earnest conference on *some subject*. They become extremely intimate. They correspond incessantly by letter. He seems to have the most unlimited confidence in and respect for Doctor Hulbert, whose influence and control over him became almost absolute. He begins to change in his feelings toward his mother, although he had ever before been devotedly attached to her; and well he might be, for, upon the altar of her blind and idolatrous love for him, she had sacrificed everything of value that she possessed in the world—fortune, husband—all. Now he begins to show symptoms of estrangement toward her also. He begins to treat her with rudeness and violence. He finds fault with all that she does, and with all that she does not. She can say nothing and do nothing that is pleasing and acceptable to him. He begins to regard her as his *tormentor*, instead of his *comforter*. He is filled with suspicion and apprehension with regard to her. *He fancies she is trying to poison him!* If she procures a few dainties for him, they must be given to him by a stranger's hand. If she employs a housekeeper, she must be introduced to him by Doctor Hulbert. His old affection for her occasionally struggles out like sunshine from under a cloud, but immediately vanishes again; whereas formerly he trusted her with everything, he now trusts her not at all. Formerly he lavished upon her the most costly presents; he now takes them from her, and gives them

to Doctor Hulbert. Formerly he left all his valuables in her charge ; now he gives them to Doctor Hulbert *to keep safely*. Only a few months before she was the respected head of the household, and everything went smoothly and prosperously on under her prudent management ; now she is set aside as utterly unfit to have the charge of anything. *A hireling* is installed in her place, and the servants are instructed to utterly disregard her. Then he considered her competent to transact all his extensive and complicated financial business ; now he thinks that she is imbecile—a fit subject for the lunatic asylum, and he actually had it in contemplation, with the aid of his new friends, to put her there.

Formerly when he was sick no one could wait upon and nurse him but his mother, and he would take no medicine but from her hand. Now she is banished from his presence, as the evil genius who prevents him from getting well, and *Dr. Hulbert takes her place*. The sicker he becomes the more violent his antipathy toward her grows, *precisely as she sinks in his estimation Dr. Hulbert rises*. She is finally driven from the house (his other relations had been sent off before) as the very personification of all that is base and infamous, vile and wicked, and forbidden ever again to return under the penalty of *being shot* ; and the "*Man of God*" is *Lord over the whole establishment*. On one occasion she steals unobserved, as she supposed to her bed-room, situate in a part of the house altogether remote from that occupied by her son, to get a change of clothing and to rest for a few moments her aged frame, faint and exhausted with anxiety and watching, with going hither and thither to this doctor and to that ; and who hastens to obtrude upon her even here in the privacy, almost sanctity of her own chamber, but this same omnipresent and omnipotent man of God, ordering her to depart at once, *telling her that if Carlton only knew that she was in the house, it would throw him into one of those fearful spasms, and he might die, and of course it would be her fault !* And straightway the old mother drags her weary limbs away from her own door, denied a change of clothing, or even the refreshment of a cup of tea, which a servant had brought to her.

And what was transpiring in the sick man's room above ?

Every moment was loaded with fate ! There he lay almost at his last gasp, emaciated to a skeleton, bolstered up behind and before, executing a will, giving every dollar of this vast estate, which had been yielded up to him by his parents, upon the implied if not the express trust and confidence, that he would not alienate it from the family, *to strangers—to entire strangers—one hundred thousand dollars of it to the Reverend gentleman for about a week's nursing !*

Oh ! what a scene was that ! I do not think that its parallel can be found in the world of romance or reality. That only son dying in the family mansion—filled with family relics—replete with family associations, the custodian of the family property, surrounded by mercenary strangers and hirelings, his aged and unoffending parents cast out from his presence, using his last remaining strength in scattering their household treasures and all their earthly effects, to the four winds of Heaven, and calling down maledictions upon their venerable heads !

Surely to bring about such a result as this, one is forced to believe that the Devil himself must have left all his other business to superintend this transaction in person ; or, *that he had sent his most trusty and reliable agent.*

Such is a brief sketch of the life and the death of this most unhappy, unfortunate young man, and this brings me to the legal question involved in this case, whether the paper so executed by him purporting to be his last Will and Testament, and which is now offered for probate, has any validity or effect in the law.

That this instrument was executed with the formalities prescribed by the Statute is not denied, but it is claimed on the part of the contestants that it is not the testator's *intelligent and voluntary act*. That the conditions which the law requires to render a will valid, do not exist in this case.

Section 10 of Article 2 of the Revised Statutes, page 126 (4th Ed.), provides that, " Every person capable of holding lands (except idiots, *persons of unsound mind*, and infants, seized of or entitled to any estate or interest in lands, may alien such estate or interest at his pleasure, with the effect and subject to the restrictions and regulations provided by law,

Sec. 18 of Article 1, Chap. 6. "Every male person of the age of eighteen years or upwards, and every female not being a married woman of the age of sixteen years or upwards, of *sound mind* and memory, and *no others*, may give and bequeath his or her personal estate, by will in writing.

"Sec. 14.—If it shall appear upon the proof taken, that such will was duly executed ; *that the testator at the time of executing the same was in all respects competent to devise real estate, and not under restraint*, the said will and the proofs and examinations so taken shall be recorded in a book to be provided by the Surrogate ; and the record thereof shall be signed and certified by him."

We have thus before us the several Statutes prescribing the qualifications and conditions essential to the validity of a testamentary act ; and it is insisted on the part of the contestants, that the testator at the time of executing the will in question, was of *unsound mind*, and that he was also under *restraint* ; and if both or either of these allegations are established by the evidence, then the will must be rejected.

One of the principal questions therefore to be discussed in this case is, to what extent must a testator's intellect be impaired or disordered to render him of *unsound mind*, within the meaning of the statute.

In the first place, it will not be pretended on the part of the contestants that Carlton Gates was generally insane.

It is claimed, however, that he was *partially* insane ; that his mind and understanding were so perverted and impaired by disease as to disable him from thinking and acting with freedom, and to incapacitate him from properly considering the natural claims of his relatives upon his testamentary bounty.

This peculiar form of insanity is known as *MONOMANIA*, which is defined by *ESQUIROL*, a celebrated French writer, to be a "perversion of understanding limited to a single object or small number of objects ;" he describes it as a chronic cerebral affection without fever, and characterised by a partial derangement of the intelligence, the affections, or the will ; the intellectual disorder is concentrated on one object or on a circumscribed series of objects, the patient sets out from a false principle from which, however, he reasons cor-

rectly, and from which he draws the legitimate conclusions which modify his affections or the actions of his will ; aside from this partial perversion of the understanding, he feels, acts, and reasons as does a sane person ; the illusions, hallucinations, vicious associations of ideas, and false, erroneous and whimsical convictions, are the basis of that perversion of the intelligence called *intellectual monomania*.

Sometimes monomaniacs are not affected with intellectual derangement, but their affections, their characters, are perverted. By plausible motives and by well-reasoned arguments they seek to justify the actual state of their sentiments and to excuse their strange and extraordinary conduct ; this variety is called *affective monomania* or *reasoning monomania*.

When the will is without power to control the other faculties of the mind, when the patient commits acts which neither his judgment nor his feelings approve, when his conscience reproaches him for conduct which his will is powerless to prevent—in fact, when his actions are involuntary, instinctive and irresistible, he is said, by ESQUIROL, to labor under *monomania*, with delirium or instinctive monomania. This last mentioned form of mental derangement has been also termed *moral insanity*.

In a manual of Psychological Medicine, published in London in 1858, by Bucknill & Tuke, page 123, it is stated that, “monomania or partial insanity is characterized by *some particular illusion or erroneous conviction* imposed upon the understanding, and giving rise to a partial aberration of judgment, the individual affected is rendered incapable of thinking correctly on subjects connected with the particular illusion, while in other respects he betrays no palpable disorder of the mind.”

GEORGET, another eminent French writer on insanity, in treating of monomania, says : “Sometimes there exists a single idea or series of dominant ideas ; sometimes the patient exhibits only a slight degree of *mania* or *dementia*, which does not prevent him fixing his attention on the objects with which his mind is struck, and reasoning from them as he would have done formerly. There are even some patients whose reason is not at all deranged, and in whom only a

more or less profound diversion of the sentiments and affections is to be observed, accompanied neither by marked agitation nor maniacal excitement; or there may be an habitual state of agitation, anger, transport, and sometimes even of maniacal excitement, *but without injury to the judgment, without intellectual derangement.*

"If one converses with such patients on subjects not connected with the morbid portion of their mental state, in general, no difference between them and other persons will be perceived. Not only do they make use of ordinary knowledge, but they are able to acquire new facts and new reasonings. Moreover they preserve so correct a notion of good and of evil, of justice and injustice, and of social observances, that whenever they forget their moral sufferings and their illusions, they conduct themselves in society as well as other people.

"Nevertheless, these subjects of insanity, in appearance so rational in all the relations of life, have ordinarily committed a number of extravagances which have necessitated their confinement in an asylum, and the most skillful physician cannot predict in what manner they will act, that they will not enter into engagements most prejudicial to their interests, or perpetrate the most reprehensible acts."

In TAYLOR's *Manual of Medical Jurisprudence*, 6th American Edition, page 631, reference is made to a *mania* without derangement of the intellectual faculties of the mind, which appears "in the shape of a *causeless suspicion*, jealousy or hatred of others, *especially of those to whom the affected person ought to be attached.*"

Doctor WOOD (not the gentleman who is connected with this case), in his *Treatise on the Practice of Medicine*, Volume 2, page 802, in the course of his remarks relating to insanity, says :

"Another form of moral insanity is that of *excessive irascibility*. The least opposition is apt to throw the patient into an ungovernable rage, driving him to the commission of *acts* of which in his cooler moments he repents. A regard for public opinion, or the fear of personal consequences, will

often be sufficient to control the expression of these feelings; but when no such restraint exists they are allowed full sway, and the patient seems to take an insane delight in their indulgence. *To abuse or even strike a friend, parent or other near relative; to curse and revile, to pour out torrents of reproaches and accusations without foundation, are among the acts of persons affected with this form of insanity; but toward the world at large their conduct may be irreproachable; and though often willing to admit themselves in the wrong to the objects of their excitement, they find plausible excuses which deceive the multitude, and sometimes make themselves appear to be persecuted individuals.* The monomaniac will frequently conceal his infirmity from the knowledge of others; and when at length his delusion has become so intense as quite to have got the mastery over his judgment, it will be found that he has long secretly cherished this insane notion *while mingling, unsuspected in the world.*"

Mr. BAILLARGER, the leading French authority of the present day upon insanity, says:

"There exists a very great number of cases in which the perversion of intellect *is limited to one idea or series of ideas always the same.* Often this perversion exists without being suspected, and does not involve any disorder; without the confession of the patient one would know nothing of his struggles against an idea which has finally mastered him."

Dr. WINSLOW, in his work on Diseases of the Brain and Disorders of the Mind, page 280, says:

"The power of concealing delusions, which confessed and even dangerous lunatics have been known to possess when under the strictest and most searching examination, has often astonished persons unaccustomed to deal with them, and not acquainted with the subtle phenomena of insanity. The illustrious Lord Erskine observes in one of his most able and eloquent speeches, that in all the cases which have filled Westminster Hall with the most complicated considerations, the lunatics and other insane persons who have been the subjects of them, have not only had the most perfect knowledge and recollection of all the relations they stood in toward

others, and of the acts and circumstances of their lives, but have in general been remarkable for subtilty and acuteness. These are the cases which frequently mock the wisdom of the wisest in judicial trials, because such persons often reason with a subtilty which puts in the shade the ordinary conceptions of mankind; their conclusions are just and frequently profound, but the premises from which they reason, when within the range of the malady, are uniformly false—not false from any defect of knowledge or judgment—because a *delusive image*, the inseparable companion of real insanity, is thrust upon the subjugated understanding, incapable of resistance, because unconscious of attack.”

M. DAGONET, Physician-in-Chief of the Insane Asylum at Stephansfield, France, says of the *monomaniac*: “He is of *excessive susceptibility*; the least obstacle, the slightest contradiction developes his irritability to the highest degree, and gives rise to an excess of agitation, almost equal to that witnessed in the true maniac.

“The moral sense, and above all, the *sentiments of affection*, are deeply perverted. If such patients have not conceived a profound antipathy to persons who were formerly most dear to them, they at least manifest the most supreme indifference toward them. *They do not hesitate for an instant to sacrifice friends, relatives or acquaintances to the ideas which pre-occupy them.*

“The moral sense is almost almost always vitiated to an extreme degree; *the feeling of affection amounts to nothing; there is not only a complete indifference toward persons he formerly loved, but frequently a profound aversion is shown for them.*

“The consciousness of the patient becomes entirely changed. *He has never any doubt of the validity of his erroneous convictions.* He is affected with a partial perversion of the intellect, more or less restrained in its manifestations, but always characteristic. Aside from this derangement, he preserves a remarkable degree of exactness in his ideas, and of apparent integrity of his faculties.”

PINEL says of monomaniacs, that “Their attachments give way to feelings of repugnance or of hatred; they exaggerate

every sensation, especially those of unpleasant character, and interpret the most harmless actions as being intended to injure them."

In treating of the same subject, PRICHARD declares that "the social affections are either obliterated or perverted."

Sir W. ELLIS, M. D., resident Superintendant of the Insane Asylum at Wakefield, England, in describing some of the more prominent symptoms of insanity, says :

"Another circumstance of a very painful character is frequently attendant upon insanity, and, as far as I know, no attempt has been made to account for it. *I am referring to the change which takes place in the affections towards those to whom the patients have formerly been most attached.* This change generally takes place in those cases where the patients themselves are quite unconscious of the existence of any disorder, and where it has come on by slow degrees, and is only very partial in its effects."

And PHILLIPS, in his work on lunatics, idiots, and persons of unsound mind, says :

"Apparent sanity on some subjects is not conclusive proof that delusion on those particular subjects, and showing itself on particular occasions, does not exist ; and it seems that in civil cases this partial insanity, if existing at the time of an act done, invalidates that act, though it be not directly connected with it. It has been said that where there is delusion of mind there is insanity, as when persons believe things to exist which exist only, or at least in that degree only in their own imagination, and of the non-existence of which neither argument nor proof can convince them, and which no rational person would have believed. This delusion may sometimes exist in one or two particular subjects, though generally there are other concomitant circumstances, such as eccentricity, irritability, violence, suspicion, exaggeration, inconsistency and other marks and symptoms which may tend to confirm the existence of delusion, and to establish its insane character."

Dr. HAMMOND, Professor of Diseases of the Mind in the

Bellevue Hospital Medical College, New York, and late Surgeon-General U. S. Army, reports the following case which came under his immediate notice :

"A gentleman, a widower, lived upon terms of great affection in the same house with his sister who managed his establishment for him ; for several years they had lived together without anything occurring to disturb the sincere attachment which existed between them ; *he was as careful as possible to provide for all her wants, and exhibited a tenderness and love toward her, which were noticeable to all with whom they were thrown in contact.* One morning, at breakfast, without any premonitory indications of a change in his conduct having been observed, he removed his boots, took off his coat, and seated himself at the table in this condition ; his sister surprised at these acts in one who had always been remarkably punctilious in all his social observances, inquired his reasons for such strange behavior, and made some laughing remark on the subject ; he gave no answer, but, jumping up from his chair began to swear and curse in the most violent manner ; becoming alarmed for her personal safety, she made her escape from the room, and sent for the family physician ; gradually, however, her fears abated, and approaching the door and hearing no noise within, she entered the room ; to her great astonishment she found her brother properly clothed, seated at the table as if nothing had happened, and waiting for her to pour out his coffee for him. At first he appeared to be in entire ignorance of his singular conduct, but at last he admitted that he believed he had taken off his coat and boots, and sworn a little. He excused himself by saying that his feet hurt him, and that he had felt very warm. Nothing further evidencing any mental derangement took place, *till she began to notice a change in his demeanor toward her. He found fault with her personal appearance ; said she arranged her hair badly ; that her dresses were unbecoming, and awkward in her movements. Then he accused her of neglecting the household ; declared she was ruining him with her extravagance ; that her conduct toward him was disrespectful and insulting, and that if she did not amend her ways he should be forced to send her out of the house.* She bore all his unkindness with great patience, and tried to convince him of

the erroneous character of his impressions. But she might as well have attempted to change the course of the sun. His delusions had become fixed as a part of his mental being, and all efforts made to dissipate them only served to plant them deeper in his mind. Finally it became very obvious that he had acquired a decided aversion to her, and at last so hateful had the very sight of her become to him that he ordered her to leave the house, giving her but three days in which to make her preparations for departure. Before she left his residence he had another attack of delirium, which lasted several hours, and in which he made several attempts to cut his throat. Not till the occurrence of this second paroxysm did she have any idea that his conduct toward her was the result of insanity. After it passed off she spoke of his condition to other relatives, but no action was taken in regard to putting him into an asylum. The day subsequently to this attack he came home with a common woman, whom he installed as housekeeper, and his sister took her departure.

*"Up to this time there had been no interruption in his business operations. In the interval between the two attacks of delirium, his mind, except as regarded his sister, gave no evidence whatever of aberration. In all his relations with others he was as kind and considerate as he had ever been, and showed no diminution in his ability to manage all the details of his extensive mercantile transactions.*

*"Soon after dismissing his sister from his establishment, he made a will in favor of the woman whom he had introduced as his housekeeper. This will he read to me. It was perfectly correct in form and detail, and he conversed about it in an entirely lucid and logical manner. He said that it had always been his intention to leave his property to his sister, but that she had behaved so badly toward him, that he was determined to cut her off altogether. I endeavored, but in vain, to dissuade him from this purpose. He would not listen to argument, and the more I tried to convince him of the erroneous character of his convictions, and of the great wrong he was perpetrating, the more obstinately he seemed determined to carry out his design; and finally he accused his sister of sending me to him to induce him to change his will. As I did not believe him to be of sound and disposing mind, I refused to witness this document, and the cer-*

vant whom he summoned likewise, at my suggestion, declined to attest it. He evinced no surprise at these refusals, on the contrary he declared that they were just what he had expected, and that we were all in league with his sister, to prevent him disposing of his property as he chose.

"During the whole course of this interview, and in many others which I had with him before and after this event, I failed entirely to discover any sign of mental derangement, except so far as related to his sister. On every other topic of conversation his opinions were such as showed that he possessed a sound and discriminating judgment, and his reasoning was such as would have convinced any one unacquainted with his delusion, of the perfect integrity of his mental faculties. Even as regarded his sister, there was no error in his intellectual processes; his premises were indeed false, but the arguments he based upon them, and the deductions he drew from them, were thoroughly logical; certainly, if she had been the character he represented her to be, and had really been guilty of the conduct towards him of which he accused her, his aversion would have been perfectly natural.

"Previous to his third attack of delirium, the severest charge he had made against his sister involved nothing of a criminal nature; he never went farther than to accuse her of a want of respect, of superciliousness and extravagant conduct, and of neglecting his comfort.

"After this last paroxysm, he told me one morning, in a very confidential manner, that she had made two unsuccessful attempts to poison him. A few weeks subsequently to this attack, he died suddenly of pneumonia. His will was found after his death, written in his own handwriting, but neither signed nor witnessed. It bequeathed all his estate to his housekeeper.

"In this case there were

"1. Occasional paroxysms of delirium.

"2. A change in the feeling of affection he had always entertained for his sister.

"3. Delusions in regard to the conduct of his sister toward him.

"4. The desire to punish her by excluding her from her inheritance.

"There can scarcely be a doubt, that had a will been ex-

[illegible]

It is hereby certified that the foregoing is a true and correct copy of the original as the same appears from the records of the Department of the Interior.

"HALLUCINATIONS ARE NOT AN OBSTACLE TO RESPONSIBILITY OF  
PARTY WHEN THEY HAVE BEEN LONG EXISTING, WHEN THEY HAVE  
EXERCISED A DIRECT INFLUENCE ON THE ACTS OF SUCH PARTY AND NO PERSON  
WAS AT FIRST AFFECTED, AND WHEN THE INDIVIDUAL HAS ALREADY  
CONSIDERED IT AS HIS SOUL'S LIEGE. BUT IN CASE OF A SUDDEN  
REVENUE OF THE SUBJECT, HALLUCINATIONS SHOULD BE CONSIDERED  
VALID WHEN HE IS VICTIM OF A SENSITIVE PERIOD, OR WHEN HE  
ONLY CONSIDERS THEM AS SUCH, HE IS DEPRIVED OF HIS FREEDOM OF  
A DECISION TO RESIST THEM BY MEANS OF SUBSTANCES OR THE HELP  
OF WORKMEN HIM BY MEANS OF ELECTRICITY; OF THROWING UN-  
FECTED GUNS AT HIM, &c., &c. LIBERTY OF WILL CANNOT BE EXER-  
CISED WHEN THE SUBJECT OF DELUSIONS TRANSFORMS IN HIS IMAGI-  
NATION THE WORDS OF HIS RELATIVES INTO REPROACHES, INSULTS OR  
MENACES, OR WHO TAKES THE PERSONS OF HIS FRIENDS FOR DEVILS OR  
MONSTERS; UNDER THESE CIRCUMSTANCES, AS IN ALL THOSE WHERE  
HALLUCINATIONS OR ILLUSIONS EXERCISE A DIRECT AND PREJUDICIAL IN-  
FLUENCE OVER THE ACTS, IT IS CERTAIN THAT THE WISDOMS OF THE PER-  
SON AFFECTED CANNOT BE LEGALLY SANCTIONED. THE FIRST CONDITION  
OF EVERY LAWFUL ACT IS WANTING, *the will is fettered.*"

**Dr. HAMMOND** also says:

"The indifference and often dislike toward friends and relatives, which all authorities on this subject refer to as a prominent feature, has almost invariably formed a striking characteristic; indeed, one of the most common delusions under which monomaniacs labor is, that their friends have insulted or injured them in a manner which precludes forgiveness."

And as to whether a *monomaniac* can conceal or control the particular manifestation of his insanity, HASLAM in his "Observations on madness," says: "Insane persons have some-

times such a high degree of control over their minds, that when they have any particular purpose to carry, they will affect to renounce their opinions, which shall have been judged inconsistent, and it is well known that they have often dissembled their resentment until a favorable opportunity has occurred of gratifying their revenge."

The following case was reported in the *New York Times* of November 30th, 1869: "A singular case of aberration of mind has been brought to the attention of the Board of Surgeons of the United States Army. One of the profession, who for many years has been on active duty, and distinguished for his ability, has of late accused officers of high rank *with attempting to poison him. At first he mistrusted these poisons were mixed with his food, and thereupon commenced to cook his own victuals. He next suspected the deadly ingredients were mixed with his bread; and, finally, suspected poisonous exhalations were in his pillow or on his clothes. The officer has been retired and placed under proper treatment, but has, in his own defence, forwarded to the War Department a report of forty pages, carefully written and thoroughly reviewing his past services. The document is one evincing great ability, but betrays the unfortunate condition of the writer in his accusations against army officers.*"

I think I have now cited a sufficient number of medical authorities and cases to show that there is a species of insanity which, in common with other forms of insanity, *destroys the ability of the person afflicted to think and act with freedom during its continuance. That this manifestation of insanity is generally accompanied with insane delusion, which insane delusion is a persistent and morbid belief in supposed facts which have no existence except in the perverted and distorted imagination of the sufferer, and a persistent and morbid belief of such supposed facts against all evidence and probability to the contrary.*

I now propose to call your Honor's attention to some authorities to show that an insane delusion is recognized by the Courts as a legal as well as a medical test of insanity, and that it frequently operates in such a way as to destroy testamentary capacity.

The decisions on this subject are so numerous and explicit that there can, at this day, be no doubt or uncertainty whatever as to the true rule of law to be deduced from them, which is this :

*That any delusion which prevents the testator from properly considering the claims of a person standing in such a relationship toward him as to be the natural object of his testamentary bounty, is an insane delusion, and disqualifies him from making a valid will.*

In the case of *Drew v. Clark*, reported in *Addams' Ecclesiastical Reports*, Vol. 3, Part 1, page 79, the testator, Scott, had conceived a violent antipathy toward his daughter, which was entirely destitute of any sufficient ground. He made his will, depriving his daughter of all participation in his estate. The Court set aside the will, holding that it was the offspring of an insane delusion with regard to his daughter.

The same doctrine was held in a case decided in Kentucky in the year 1822. George Moore made his will in April of that year, and shortly afterwards died. The validity of the will was disputed, on the ground of unsoundness of mind of the testator. It was shown that about twenty years before his death he had a dangerous fever, during which he imbibed a strong hatred against his brothers, whom he imagined intended to injure or destroy him, though they had attended him through his illness and never gave any cause for his suspicion. This antipathy continued till the day of his death, with a single exception, when he made a will in their favor, which he subsequently cancelled. The Court, in its decision, said : "that he cannot be accounted a free agent in making his will so far as his relations are concerned, although free as to the rest of the world. But, however free he may have been as to other objects, the conclusion is irresistible that this peculiar defect of intellect did influence his acts in making his will, and for this cause it ought not to be sustained."

Judge DEAN, in his work on medical jurisprudence, page 571, in regard to the influence of *monomania* upon testamentary capacity, says :

"In 2 POTHIER on *Obligations*, appendix 24, is laid down, as we suppose, the true doctrine, by Mr. Evans, the translator. 'I cannot but think,' says he, 'that a mental disorder operat-

ing on partial subjects should, with regard to those objects, be attended with the same effects as a total deprivation of reason ; and that, on the other hand, such a partial disorder operating only on particular subjects, should not, in its legal effects, have an influence more extensive than the subjects to which it applies ; and that every question should be relevant to the point whether the act under consideration proceeded from a mind fully capable, in respect to that act, of exercising sound, free, and discriminating judgment ; but in case the infirmity is established to exist, the tendency of it to direct and fetter the operations of the mind should be in general regarded as sufficient presumptive evidence, without requiring a direct and positive proof of its actual operation.' In accordance with these views, the rule or principle to be followed in reference to any act is :

"1. To establish the delusion which must be entertained as true, and must be false in fact.

"2. To trace the act in question directly to the delusion, either as being actually produced by it, or so intimately connected with it as to lead to the presumption that it never would have occurred had not the delusion existed."

In a case recently determined in the City of New York, these principles were enforced by the Court and carried out by the jury.

The case referred to is that of Madame Jumel, who died several years since, leaving the bulk of a large estate to various ecclesiastical and charitable institutions and disinheriting her relatives. The case was brought to trial before the Supreme Court, Mr. Charles O'Connor appearing as counsel for the contestants. It was shown in evidence that the testatrix was very old, and that she was subject to delusions of various kinds ; among others, *she conceived the idea that several of her relatives were trying to poison her, and she would refuse to take food which they gave her.*

The Court among other things charged the Jury : "You have the evidence of the members of the family of this lady, and their evidence, as given here, is wholly uncontradicted as to the facts. It seems that this lady who was very old, nearly ninety years of age, in 1857, exhibited a marked change in her

*character—deluded delusion: that she was taken sick at Saratoga and was taken home by her friends, exhibiting on the way some excitement. After she got to her home she became the subject of the delusion, and willful delusions have been given before you. These delusions, however, on the ground show that they are excited and that they are not the result of her own mind, are put to you as the true picture of the insanity of this lady and of the utter danger of a jury upholding the will as the will of a sane mind. And if she made a will based upon the belief that her relatives were trying to deprive her life—to poison her, it is manifest that it is not a sane state of mind: it is an unwholesome, unsound state of mind, not such a state of mind as the law requires to make a will, or as should be pronounced by a jury to be that of a person of sane and disposing mind. There seems to be no dispute as to the existence of those delusions," and the jury found against the will.*

A very recent case, in striking analogy with the case at bar, has just been decided by the Surrogate of Orange County.

JOHN C. COLBURN, a young unmarried man, made his will which he wrote himself, giving his whole estate to a Dr. Jones, in whose house he spent the last few months of his life and there died. His father and sister survived him. He had derived his property, amounting to about \$50,000, from his uncle by inheritance: he was shown to have been in very feeble health and to have entertained a violent but groundless antipathy towards his father and other relatives. The will was contested by his father on the ground of insanity or insane delusion on the part of the testator, and undue influence exercised over him by Dr. Jones, who was his physician. The Surrogate has just rendered his decision rejecting the will on both grounds.

Dr. GRAY, the superintending Physician of the Insane Asylum at Utica, was examined as a witness in this Colbourn case, and on being asked this question, "If a person who has always been on friendly terms with his relatives becomes impaired in health, and afterwards, either constantly or gradually, becomes hostile towards such relatives without cause, what does it indicate?" Answered: "I should say that would indicate insanity."

In the case of *Hopper*, decided in the Court of Appeals of

this State and reported in 33 *N. Y. Rep.*, the decision of the Surrogate refusing to admit the will to probate and the order of the Supreme Court affirming that decision, were affirmed. Judge DENIO in that case uses this language (page 624): "On questions of testamentary capacity courts should be careful not to confound perverse opinions and unreasonable prejudices with mental alienation. These qualities of mind may exist, even in a high degree, and yet, so far as regards the views which the law takes of the case, the subject may be sane and competent to perform a legal act and be held responsible for crime. *Setting aside cases of dementia or loss of mind and intellect, the true test of insanity is mental delusion. If a person persistently believes supposed facts which have no real existence, except in his perverted imagination and against all evidence and probability, and conducts himself, however, logically upon the assumption of their existence, he is so far as they are concerned, under a morbid delusion; a delusion in that sense is insanity; such a person is essentially mad or insane on those subjects, though on other subjects he may reason, act, and speak like a sensible man.*"

(And he refers to the case of *Drew v. Clark*, 3 *Addam*, to which I have called your attention.)

"If the deceased in the present case was unconsciously laboring under a delusion, as thus defined, in respect to his wife and family connections, who would naturally have been the objects of his testamentary bounty when he executed his will or when he dictated it (if he did dictate it), and the Court can see that its dispositive provisions were or might have been caused or affected by the delusion, the instrument is not his will, and cannot be supported as such in a Court of Justice."

Judge BROWN (for nearly twenty years a Justice of the Supreme Court of our own district, and one of the most eminent jurists of the age), who was in the Court of Appeals at that time, uses this language (page 640): "If a careful examination of the evidence taken before the Surrogate results in showing that Charles Hopper, upon some subjects, and indeed generally, had mind and memory and sense sufficient to know and comprehend ordinary transactions, *still, it will also result that upon the subject of his wife and his other relatives, those who*

would naturally have been the objects of his care and bounty, and who would have succeeded to his estate, he was a maniac, given to the grossest insane delusions. The instrument proposed cannot be regarded as his will, because upon such a subject he was incapable of expressing or forming an intelligent will. It is the result, not of a clear, unclouded intellect, having an intelligent comprehension of the relation of the things with which it proposes to deal, but the result of a delusion which controls the judgment and misleads the understanding in relation to the subjects upon which it is acting. A monomaniac may make a valid will when its provisions have no connection with the particular delusion, and there is no reason to think they are influenced by it. But when, as in this case, the delusion relates to the persons who would, in the natural and usual course of things, become the objects of the maker's care, solicitude and bounty, and especially upon whom the law would cast the inheritance of his property, the instrument must be regarded as invalid to pass the estate because it does not express the will of a testator of sound and disposing mind."

I will also call your attention to the case of *Stanton v. Weatherwax*, 16 Barbour, page 25.

I read from the marginal notes: "When a person conceives something extravagant to exist which has no existence whatever save in his own heated imagination, but he is incapable of being reasoned out of that conception, such person may be said to be under a delusion, and the absence or presence of delusion, so understood, forms the true test or criterion of absent or present insanity. *Delusion in this sense of the word and insanity are convertible terms.* A will made under the influence of a powerful delusion which has not only impaired but perverted the testator's judgment and understanding, in relation to the subjects connected with the provisions of the will, so as to exercise a controlling influence in the disposition of his property, is not the will of a person of sound mind; the mind of the testator being unsound on the very subject on which he is called to exercise its powers in making the will."

I now propose to call your Honor's attention to some of the prominent facts established by the uncontroverted evidence in this case.

Carlton Gates never earned a dollar in his life; he derived the whole estate amounting to nearly \$300,000, which he assumed "to testate" upon in favor of strangers, from his parents (principally from his mother), both of whom are still living. Some four years ago, when in comparative health, he made his will, giving or rather restoring the estate to his mother.

Down to the time of the commencement of the sickness which resulted in his death, he had always exhibited the utmost kindness and affection toward his mother; he had always recognized his obligation of love and gratitude to her. He had the utmost confidence in her judgment, and consulted her wishes in every respect. He seemed to regard himself as but the custodian of her property, and the protector of her interests; he constantly manifested his affection by solicitude for her welfare and comfort, and often made her valuable presents. On his last return from Europe, November, '68, he brought with him an entire wardrobe for her, costing upwards of \$1,500. He insisted that she should have a carriage for her own use, and that she should take wine every day to strengthen her. He consulted her taste and her judgment in the arrangement of the furniture in the house and his collection of curiosities, and her suggestions in even such trivial matters seem to have been regarded by him as law.

Now having looked upon that picture, let us look upon this :

The transition in his feeling and conduct toward his mother within the short space of four months, during which his disease was making constant progress was so great, that we find him treating her with violence, and heaping upon her indignities of the most cruel and outrageous character. He chokes her; pours pitchers of cold water and cups of hot coffee upon her; strikes her; throws knives at her; squeezes her face so as to force out a tooth; tears her dresses off; declares that she is insane; calls her an imbecile and a thief; says that she is a fit subject for the lunatic asylum; that he will have her put in charge of a keeper who shall tie her up and strip her off and whip her every day; charges her with endeavoring to poison him; says that he will kill her, and finally expels her from the house and threatens to shoot her if she ever returns!

Can it be possible, I would ask, that he could have been

guilty of such conduct toward his mother, who had always been so good and kind to him, and whom he had so loved, if he was in his right mind? No misbehavior on her part would have been a sufficient justification or provocation for such treatment from any one, and least of all from him. The very statement of these facts must convince every fair and caudid mind that he was essentially deranged. This, and this alone, furnishes a satisfactory explanation for his conduct. These facts bring the case at once within the authorities cited.

It is an uncontroverted fact that she had always entertained for him the strongest affection; that if she was guilty of any fault or wrong, it arose from over love and indulgence to him. But his mind had become so disordered and perverted by disease and other influences, that he was no longer able to appreciate and respond to her affection. He sees her through the distorted medium of his insane delusion; regards her as his enemy and persecutor; construes her every act into an act of unkindness and hostility.

Although sensible that his end is approaching, he manifests no change of feeling or conviction with regard to her, and finally executes a will in favor of strangers and menials, some of whom had been in the house but two weeks, *whose very names were unknown to him* (p. 319), and excluding her from all participation in the estate which her bounty had conferred upon him, and dies, so far as the evidence discloses, without expressing the slightest remorse or regret, or even a wish once more to see her!

Such are some of the most prominent features of this most extraordinary case; and in my judgment they alone, are abundantly sufficient to condemn this will in any Court of Justice, as the act of a very madman.

In addition to these facts, it also appears, that he had conceived a similar antipathy toward his other relatives, the Nisbet family, with whom he had always lived in harmony, and with whom his intercourse had always been of the most pleasant and friendly character.

But now he suspects his aunt Nisbet is also trying to poison him; charges her with theft; lays violent hands upon her, and drives her and her daughter from the house.

His old antipathy for his father, is increased and intensified

to the utmost degree. He carries his loaded revolver to shoot him the moment he ventures into his sight. He insults and abuses his former physician, Dr. Upham, because he will not spend a night with him, and he calls Dr. Arnold who attended him in his last sickness, a damn'd fool ; says he, don't know how to treat a patient ; and refuses to take the medicines he leaves for him, because they contain poison.

At the very time he is giving instructions to the lawyer as to the provisions of the will in question, *the lawyer swears that he was drinking large quantities of hot water for the purpose, as Carlton said, of taking the coating off his stomach, like the plaster from a ceiling !* (p. 308).

Notwithstanding that he is himself an educated physician, and receives the assurance of Doctors Upham, Arnold and Wood, each of whom made a thorough examination of his case, and perfectly understood it, that all his symptoms and sensations could be satisfactorily explained and accounted for on the ground of the disease under which he was laboring, he conceives the idea that he has been poisoned, and adheres to it with the utmost tenacity to the close of his life ; and dies under the conviction that he was poisoned.

So completely is he subjugated by this delusion, that he directs a provision to be inserted in his will, which embraces one-half of the whole instrument, that the contents of his stomach should be analyzed, and sets apart the sum of \$25,000 (the portion of it not expended for that purpose, *to go into the residuary estate*) to prosecute the person or persons he suspected to have poisoned him.

Such examination was made by one of the most skillful chemists in the country, Professor Doremus, and no poison nor trace of poison discovered. Nor are the names of the individuals, whom he indicated to the executors, as the suspected parties, given in this case.

It is even expressly admitted by the counsel for the proponents, when we endeavor to elicit the names of the suspected parties, that this whole belief thus incorporated in the will was groundless and the result of his delirium, and it is so testified to by Dr. Arnold.

The *post mortem* examination of his remains proves the correctness of the diagnosis of his several physicians as to his

disease, which was consumption of the lungs, to which he was always inclined, combined with disease of the liver and digestive organs, and the medical testimony also establishes the significant fact *that insane patients have a great proneness to die of these diseases* (pp. 145, 449).

Professor CHARLES A. LEE, who has made insanity a special subject of study and practice for many years, and who is the author of several works on diseases of the mind, after reading all the testimony taken in this case, declares most positively and unqualifiedly his opinion that Carlton Gates was insane; that he could account for the conduct proved against him on no other hypothesis (pp. 126, 500).

Dr. GATES, the father, testifies to the same effect. He describes his wild look and manner as he walked up and down the piazza talking and gesticulating to himself; also his refusal to drink coffee unless it was poured out in his presence, lest it might be poisoned, and his constant apprehension of being shot (p. 140).

Dr. UPHAM swears that he believed Carlton was laboring under a delusion when he attended him during his sickness in March last; that he knew, of his own knowledge, the complaints and accusations which he made against his mother for neglecting his comfort and interfering with his household were entirely destitute of truth or foundation in fact; that he knew the poor woman was doing for him everything in her power, and that he had no patience with him for talking so against her (p. 168).

These and similar facts indicative of insanity are piled up mountain high by the proof on the part of the contestants, and they are not shaken by testimony on the other side; they are not even assailed; not the slightest attempt is made to controvert them, for the very good reason that they well knew such attempt would be utterly futile. The counsel only answers: "*Is that all you can prove against him?*" and suggests that all these strange manifestations *could* be accounted for on the supposition that the testator was laboring under the delirium of fever, or that he was drunk.

The subscribing witnesses, in order to escape from the awkward position in which they find themselves placed, of having witnessed an insane man's will, are, of course, inclined to favor the theory so feebly suggested; although they all admit that they are not experts on insanity, and know nothing whatever about the subject of insane delusions, and had never heard about these extravagances of Carlton until they were testified to in this case they are, one and all, constrained to acknowledge that if he was not drunk or delirious, he must have been insane or devilish. Messrs. Rose and Farrington say that they would not have witnessed his will had they known his true condition, and Mr. Radford could not say whether he would or not.

Mr. ROMER, the attorney who drew the will and who furnishes the "hot water" for the case, also sets out with the same theory, but he, too, is finally obliged to admit that if Carlton was not delirious or drunk (on hot water? which was all that he saw him drink), he would certainly have thought his mind disordered, and would not have drawn the will; and if he would not have done it I don't think any one would (p. 361).

I freely admit that the testimony of intelligent subscribing witnesses should, in general, have great weight in determining a testator's capacity to make a will. But when, as in this case, the infirmity is of a monomaniacal or delusional character, and they had no conversation with him upon the subjects with respect to which his delusion existed, their testimony that they believed him of sound mind amounts to but very little. (*Vid. Scribner v. Crane*, 2 *Paige Chy. R.*, 147). Messrs. Radford and Farrington had only seen him but once or twice, and had talked with him very little and about his health only. Mr. Rose had seen him oftener, but he admits that Carlton had made the same charges against his mother to him (pp. 390, 394).

Doctors WOOD, ARNOLD, and BROWN are all constrained to admit that this strange and unnatural conduct is entirely consistent with the idea of insanity. They also say that it *might* have been caused by alcoholic stimulants or the delirium of

disease. But this whole theory of our opponents which, in their very desperation they have resorted to, like a drowning man catching at a straw, is utterly in conflict with the facts as proven; for the evidence does not show that the deceased was under the influence of liquor but four times altogether since his last return from Europe, and only to a slight extent.

Dr. WOOD, with whom Carlton lived for several years and who knew his habits well, says most emphatically that he was not a drinking man (p. 220). Mrs. Palmer, the model lady who kept house for him six weeks during the last Spring, says that she never saw him under the influence of liquor but once during all that time (p. 337). All the witnesses on the part of the contestants unite in saying that he was perfectly free from liquor when he said and did the things in question. Therefore, there is no foundation for the supposition that this conduct can be attributed to that cause, and there is even less plausibility or ground for the theory that it was the result of the delirium of fever, for it continued many months without interruption before he was finally prostrated by his disease, and if, during all this time, he was under the delirium of his disease, then the will itself was the offspring of that delirium, for it embodies and carries out the very delusions to which it is alleged he was subject. The only difference between our opponents and ourselves is in the use of terms. They attribute the testator's conduct to the delirium of disease; we are more specific in our definition or designation; we attribute it to the delirium of his disease *of insanity*.

And it is submitted that it is not sufficient to show that fever, or liquor, or any other cause *might, could or would* produce the effects described. It must be shown beyond a reasonable doubt that they actually did produce these effects, and this is not even attempted to be done.

The whole truth about this liquor-drinking business seems to be, that his physician prescribed stimulants to keep up his strength, and at times he may have taken a little too much, the slightest quantity, in his weak state having a visible effect upon him.

I cannot, while on this branch of the case, omit to read from the testimony of the witness, ELIZABETH MURPHY, who was in attendance upon Carlton from Saturday until Wednes-

day of the week preceding his death ; it most graphically portrays his condition (p. 149):

“ Q. How old are you ?

A. Fifteen years the 4th of December.

Q. Did he (Carlton) talk with you much ?

A. Yes, he was all the time talking.

Q. What did he talk about ?

A. Well, most all about his mother.

Q. What did he say about her ?

A. He said she was an old fool, that she was giving him poison; he would not touch the victuals she gave him, saying that she was putting poison in everything she handled to give him, and every thing I took up to him he would say : ‘ Did Mrs. Gates send it ? ’ if I said yes, he would tell me to go and throw them in the swill-pail.

Q. Did Mrs. Gates send them up to him by you ?

A. Well, some things ; if I told him Mrs. Gates sent it he would tell me to throw it in the swill-pail, that there was poison in it.

Q. If you told him that anybody else had sent it what would he do ?

A. He would eat it then.

Q. What did Mrs. Gates send up by you to Carlton ?

A. Glasses of jelly, bread and butter and coffee ; he would not take anything only what she did not send him.

Q. What did he tell you to do with the things which she sent him ?

A. To put them into the swill-pail.

Q. What did he say ?

A. He told me not to take them into the kitchen, but to throw them right into the swill-pail.

Q. What reason did he give you for that ?

A. He said that his mother had put poison on them.

Q. Did you carry the things out as he directed ?

A. No, sir.

Q. What did you do with them ?

A. *I ate them.*

Q. They did not poison you ?

A. No, sir.

Q. Did you ever hear him speak of Dr. Arnold ?

A. Yes, sir ; he sent me for Dr. Arnold, and I went for him, and he came that afternoon and left a bottle of medicine ; and when he went out, Carlton called me and he said, ' there is a bottle of poison.'

Q. Was that the bottle of medicine which Dr. Arnold had left for him ?

A. To take—yes, sir ; Dr. Arnold gave it to him.

Q. Did he take it ?

A. No, sir ; when I gave it to him he said that he would not touch it, to lay it back on the bureau and cover it up where nobody would see it ; he said that Dr. Arnold was ' a damn'd fool ;' he said that he did not know how to attend any body ; that when his father visited a patient he stayed for half-an-hour and questioned him until he understood his case, but Dr. Arnold sat there like a fool, and did not ask him any questions ; and when he (Carlton) asked him a question, he would hardly know how to answer it.

Q. The bottle that Dr. Arnold left remained there ?

A. Yes, sir.

Q. Carlton did not take it ?

A. No, sir ; not while I was there.

Q. Did you take that ?

A. No, sir."

Now can this kind of talk and conduct come from a person who is sane and rational ? And yet we find Dr. Arnold swearing that this man who thought he was a damn'd fool, and did not know how to treat a patient, and would not take the medicine he left him because it was poison, had a mind " as clear as a bell," and was perfectly capable of making a will.

Why Dr. Arnold is not even consistent with himself, for after so swearing, he immediately swears as strongly the other way (page 205):

"Q. If you had heard that he thought it was his mother who had poisoned him, would not that account for his antipathy toward her ?

A. Yes, sir.

Q. And if he had no cause for believing that, would not that show that there was something wrong about his mind ?

A. Yes, sir.

Q. If Carlton supposed that this mother and father, and the other members of the family there were continually trying to poison him, would not that be a strong evidence that he was insane?

A. I would certainly think it was a strong evidence of insanity.

Q. You could account for it on no other hypothesis?

A. No; I should consider it a hallucination form of insanity, monomania.

Q. He (Carlton) told you that—the story of his having been poisoned by a woman who was his former mistress—while he was in that delirious state you have described?

A. Yes, sir.

Q. Did you regard it as the talk of a man who was not in his senses, and did not know what he was about?

A. I did to a certain extent."

And yet we find this very same stuff occupying two pages of the will.

And this is not the only inconsistency of Dr. Arnold, both he and Dr. Wood admit that during the first week of Carlton's sickness, when his pulse was 100, he was very much excited, and not in a fit condition to make a will; that a will made at that time would not have been good for anything; but in the second week when his disease was much worse, and his pulse stood at 130, they say he was quite calm, and they thought him entirely competent to transact business of any kind!

Surely no argument can be required to refute such nonsense. If the will was not made then, it is obvious that it could not be made at all, and the old people would get the property, and Dr. Hulbert wouldn't, *and hence the necessity for making him out sane the second week.*

Dr. James R. Wood is also obliged, but most reluctantly, to testify in favor of the insanity of the testator (p. 230):

Q. If he (Carlton) had thought that his mother and father had poisoned him, and other members of the family had poisoned him \* \* \* and had persevered in that conviction, I understand you then to say that his mind was deranged?

A. I should think so; if Dr. Gates had said it; if he thought they had poisoned him, that he was laboring under insanity or something else.

Q. If he had told you that his father or mother or any of his relatives had poisoned him, then you would have thought there was something the matter with his mind?

A. Yes, sir; I would have told him so.

Q. During all the interviews you have had with that family or Mrs. Gates, did you ever see anything to justify the suspicion that she was insane?

A. Oh, I never saw anything to justify the believing that she was crazy.

Q. If Carlton had the idea that his mother was insane when she was not insane, and there was no cause for such a suspicion—on what principle would you account for that idea?

A. It is hardly a supposable case, that any man without any cause would suppose another insane.

Q. It can only be accounted for by supposing that there was something wrong about him?

A. *It may have been.*

Q. Is it not quite usual for insane patients to imagine that they are sane, and that others are insane?

A. *It is.*

Q. Very usual?

A. *Yes, sir.*

Q. If Carlton was under the delusion that he was poisoned, may he not also have been under the delusion that his mother had improperly treated him?

A. *He may.*

Q. Did it not occur to you that if the foundation for the one belief was false, that the other might be equally so?

A. I had not thought of the matter at all.

Q. Well when you think of it now?

A. *Oh, that is so of course.*

Q. Does insanity or monomania necessarily affect the memory?

A. I think not.

Q. A person may talk rationally upon any subject except the subject of the monomania may he not?

A. I think so.

Q. If Carlton's mother had been the subject of his monomania, he might have talked on every other subject rationally except with regard to her?

A. If he was a monomaniac he might.

Q. If he derived all, or nearly all this fortune from his mother and gave it to strangers, thinking that she was his worst enemy, and did not properly take care of him, you would think he was a monomaniac on that subject—would you not—that is on the subject of his mother—toward his mother?

A. Well, no; I would not, unless there was cause for it.

Q. Well, if there was no cause for it?

A. *Of course I should.*"

And it will also be remembered that this witness did not have any conversation with Carlton on his visit to him in the second week of his sickness, when he testifies that he thought he was sane, excepting in relation to his disease. This important fact was elicited by interrogatories put to him by your Honor (pp. 240-243). The conclusion is therefore irresistible in view of the facts proven, and the medical and legal authorities cited that the testator was laboring under not only one, but several insane delusions which exercised a controlling influence over his mind; notwithstanding he possessed a good memory, could talk and reason well on other subjects, and conduct himself in such a way before casual observers as not to cause any suspicion of the least mental derangement. And it must also be entirely evident that the will in question was made under the influence of those delusions, for it reflects them with the accuracy of a mirror. Its provisions are of such an unusual and extraordinary character that they cannot be accounted for on any other hypothesis.

It is claimed on the part of the contestants that the germ of insanity existed in the constitution of the testator, and that its development, although slow and gradual, was sure.

It first manifested itself early in his life toward his father; he had a monomaniacal desire or craving for money; the more his demands were yielded to the more they grew and strengthened; his long and deeply-seated antipathy toward his father, was the direct and legitimate result of his insane delusion, with regard to him. He fancied that he was possessed of inexhaustible wealth; that it was his birthright to spend it, and if his father had given up to him everything that he possessed

in the world, it would not have abated one iota of his antipathy, on the contrary it would inevitably have gone to swell the residuary estate under this will.

The evidence utterly fails to show any adequate cause, or any cause at all for this malignant and persistent antipathy toward his father; but it does show affirmatively that he received from him a much larger measure of paternal affection and indulgence than usually falls to the lot of children.

The older he grew the stronger his monomaniacal tendency became: at first, it was limited to money and his father, and to the collecting of "traps;" toward the close of his life it extended to other objects, and finally, to his mother. It worked a complete transformation of his character; he not only hated those he should have loved, but he loved those he should have hated: the fancied poisoners are repelled from his presence, *the real poisoner—the poisoner of his mind and soul—he takes into his embrace as a brother, and makes him his legatee.*

While in the receipt of \$1,200 per year, he expends the largest portion in self-indulgence: pawns his watch and pin; writes a most abusive letter to his father, reproaching him for having given him an education merely as "a fulcrum for his persecution;" threatens to sell everything that he has under the hammer unless he instantly supplies him with more money, and winds up his letter with these words: "*With scorn for you that you merit, and hatred that you have nurtured, I shall soon have done with myself or you. May God's heaviest curses light on you.*" C. G."

This letter bears date February 1, 1859, and with such a beginning who cannot foresee what the end must be?

On the 26th of March, 1869, about ten year's later, and five months before his death, he addresses to his mother the following letter:

"YONKERS, March 26th, 1869.

MRS. GATES: I sent you from the house at a moment when your harrowing presence was likely to prove destructive to the life of your son, already seriously in danger. My object was to avoid your dreadful influence—[And has your Honor discovered anything harrowing or dreadful in the presence of

this old lady?—during the most critical period. I hope the period of greatest danger is past, and feel that I stand a chance of recovery if I can once rally from the state of prostration in which I am ; your sojourn in a boarding house or private family can be productive of no ultimate good, and in the present much diminished state of our income, I feel that I should make no disbursements without procuring a *quid pro quo*. Since my departure for Europe last, our income has been reduced by the maneuvers of Dr. Gates and the non-fulfillment of his contract with you, at least \$1,300 each year, and last year there was a deficit from that particular source alone of \$1,900 ; add to this the losses by dishonest servants during the last two years, and there is a further deficit of \$3,500 ; consider that I have now to pay the bills of two lawyers and also of two physicians for attendance during my present dangerous malady ; consider the heavy taxation to which we are subject and you will not find it difficult to comprehend that with all the economy possible we are living beyond our income. Since my return to this country in November, I have not absented myself from home a single night, I have resided here from motives of sheer economy, and with desperate resolution have confronted your idiocy and your shamelessness and irresponsible conduct, until these, with a consciousness of your hopeless condition and the difficulties of the future tortured my mind until the high health and physical vigor I had brought home with me utterly departed and left me a prey to the first morbid influence. Better would it have been for me if I had taken the wings of the morning and fled to the uttermost parts of the earth.

Under these circumstances you will easily comprehend that if I refused myself from motives of economy a residence apart from you that which I well knew would prove my salvation, I cannot afford to support you in absence unless some solid benefit is to accrue to you.

I have long been of the opinion that a few months passed in a Hygienic and Reformatory Institute, such as a private asylum, might be of incalculable benefit to you and render it possible for you in future years to be taken care of in your own home. The enforced leisure, the efforts at reflection that you would instinctively make if you are capable of any, the

regularity of life, and the wholesome influence of a mild and steady discipline might develope in you what you most lack, the elements of self control, and return you to us a chastened and reformed woman : so persuaded am I of the necessity of such a course that I am confident that no good physician can understand your case and not emphatically endorse my views. There was once a lady, the well-known Mary Lamb, subject to occasional paroxysms of insanity ; when she felt the malady approaching she always used of her own free will to an asylum, and there took up her residence ; when the malady had ceased she returned to her home. Why could you not go voluntarily to a private asylum for a few months ? It is after all but a Hygienic establishment like a water cure, and one of which you have great need.

In conclusion I am constrained to decline the supply of all moneys for your residence in New York, where you are deriving no benefit, and where, from all I learn you are aggravating your peculiar ills. I shall be responsible for no money that you may borrow, and shall furnish you no money after such necessary time as is necessary to the completion of your preparations for a return to Yonkers.

*Millions for benefit, not a cent for nothingness.* C. G."

Now is not this letter the production of a raving madman ? Is not insanity traceable throughout the whole of it ? What a letter for a son to write to a mother ? How can it for one moment be claimed in the face of such proof that he could have been in his right mind ? Here is the same antipathy which he entertained toward his father manifested, and with ten-fold bitterness and violence against his mother and without the slightest cause or shadow of cause. *He imputes to her the same infirmity under which he himself is laboring, insanity.* Can it be seriously pretended that while he was under the influence of such feelings and delusions with regard to his mother he was in a state of mind to do her justice in the testamentary disposition of his property ?

And see his last note to her of July 30th, 1869, from New York, in which he says " I am quite ill always and God only knows when I shall recover from *the evils your fiendish conduct has caused me.*" [Contestant's Exhibit " B." ]

In this connection I would cite one more authority on this point:

"A monomaniacal delusion inveterately entertained by a testator against one who would otherwise have been the natural object of his bounty and shown to be the reason of his exclusion from it and to have had no other existence except in the distempered imagination of the testator, would invalidate a will made under such influence, and for the very plain reason that a will made under the suggestion of such an insane delusion is not what the law requires a will to be, the product of a mind capable of reasoning rightly." (*Wharton & Stiller, Med. Jur.*, page 17. Opinion of Judge KING, of Pa.)

Now if Carlton's convictions with regard to his mother were well founded, if it was true in point of fact that she was insane, that she was annoying and persecuting and trying to poison him, her exclusion from the will could be accounted for on grounds consistent with his sanity, but being entirely destitute of foundation they could have been nothing but delusions and delusions of the insanest character.

I suppose that stress will be laid by the other side upon the first part of this letter to his mother, where he refers to his father's maneuvers to cheat them out of a portion of the money to which they were entitled under an arrangement which had been made between them, and it will be argued that on the facts as there stated by him, he had just cause of resentment against his father.

But, sir, it was a symptom of his unfortunate mental condition to misstate and distort facts as well as to believe in the existence of imaginary facts—(see testimony of Dr. Upham before referred to)—one of the most striking illustrations of his habits in this respect is furnished by Mrs. Beebe, who on one occasion dined there; although the table was literally groaning under the burthen of nicely cooked and palatable dishes, Carlton commenced complaining to the witness in his mother's presence that she would not give him anything to eat; that she was starving him, at the same time eating himself and helping the witness most bountifully, but refusing to give his mother anything at all.

This witness added "I asked him if he did not consider her

age and being an idiot or lunatic, if there was not some excuse for her keeping such a bad table and bad house, admitting all he said ; he said it was such a filthy, dirty house he could not live there ; that there was nothing fit to eat. I asked him if he did not consider her age, and being a lunatic some excuse ; he said ' old, I don't consider her old, but she will be old some day and fit to die ;' he says ' it is a custom to shed tears over a relative, but I shall not shed many tears over that old woman ;' he says ' I may shed two tears and possibly not one.' "

" Q. Who did he refer you to as witnesses to confirm the statements he made about his mother ?

A. He said that if I did not believe what he had been saying about that woman *that he would refer me to his friends Dr. Hulbert and Mr. and Mrs. Darling.*

Q. On what point ?

A. *On the point of her being such a bad woman and not keeping a decent——"*

Now contrast for a moment his mother's simple and touching description of her feelings and conduct toward him (pp. 476-477):

" Q. Did you do anything at any time to interfere with Carlton's comfort or to thwart his wishes ?

A. No, I did not ; I always did everything in the world for him and punished myself ; *he said " go," and I went ; " come," and I came ;* it was just as he pleased ; he was not accountable for what he did ; Carlton was not accountable at all for anything that he did.

Q. But you did not make it a point to cross his wishes in anything ?

A. No, sir.

Q. Whatever his wishes were ?

A. Whatever they were I yielded."

But with what justice or propriety could he bring accusations against his father, whose whole life, as the evidence shows, has been but a succession of sacrifices for his family, and who had always fulfilled his obligations with them to the very letter, and paid to the uttermost farthing ?

The annuity of \$3,000 per year which he allowed to Mrs. Gates, at once found its way into Carlton's pocket, and was of course applied to his own use, and the Doctor is obliged to give Mrs. Gates an additional \$1,000 per year to assist in paying the expenses of the household.

The \$20,000 of bank stock which he gave to her in lieu of the annuity is also immediately transferred to Carlton and stands in his name at this day.

\$30,000 of the funds which he had leached from his parents was laid out in "traps" of no earthly use to him or to anybody else, and the thousands upon thousands which were spent in his European trips nobody knows. How small a portion comparatively of these vast amounts lavished upon himself, would if applied to his mother's use have supported her in comfort?

And yet we find him while usurping and appropriating to his own exclusive use the house of his parents, extensive and commodious enough for a family of twenty persons, driving them both out into the world amongst strangers, cursing and damning his father because he would not give his mother more money to give to him, and refusing to furnish his mother with any of the abundant means which he already had in his possession belonging to her, for her support, away from the house, *and threatening to shoot her if she returned.*

Now I do not think that upon this state of affairs his accusations and upbraidings against his parents can be sustained, but I do think that the very fact of making them, is an additional and conclusive evidence of his insanity.

The only argument that can be made to justify this outrageous treatment of his mother will be that she was interfering with his household, and as false and preposterous as this charge is, we nevertheless find that it is seriously made and attempted to be sustained by the proof, and we have an Intelligence Office man subpoenaed up here to prove that he supplied Mrs. Gates with ten servants between the 1st day of December, 1868, and May 1st, 1869. But they have not shown the number furnished before Carlton returned from Europe, nor after his death. We have, however; we have shown that she never had difficulty in getting and keeping servants when Carlton was not there. The truth is that as fast as she would

get them he would drive them off, and I would ask whether it is not reasonable to suppose that this man who could do all these outrageous things could not also play the mischief with servant girls?

Our opponents must indeed be hardly pressed to account for this monstrous will on the grounds consistent with the testator's sanity; according to their notion Carlton was released from all obligations of love and gratitude toward the mother who had given him birth, nurtured him through the period of helpless infancy, and bestowed upon him her whole living during his manhood, and was justified in visiting upon her the utmost scorn and contempt, and in making over to strangers the property which in her affection she had given up to him, *because she was meddling with his household!*

He was dying up stairs, but that was a matter of no consequence, his kitchen, however, must move on with the most perfect order and system, and the only person competent to superintend it and make it pleasant and agreeable for the servants was the Rev. Dr. Hulbert, for which service of a few days he must receive a sum as large as the salary of the President of the United States for his whole four years' term of office! But even this flimsy argument of interfering with the servants is entirely destitute of truth to support it. The evidence shows that Mrs. Gates had been entirely excluded from the house for the last ten days of his life, and virtually excluded for months before, and she swears that she never locked up the coal and bread, &c., and the malignity of the menials by whom it is attempted to sustain these charges is entirely apparent from the fact that they seek to distort her kindest acts into a desire to annoy him; as for instance her changing his room (as testified to by Mrs. Palmer, page 339,) giving him the largest and most comfortable room in the house instead of the small and inconvenient one he had occupied (page 468); in charging her with locking up the ice when Carlton himself had the key all the time; in charging her with driving off the servants when it was perfectly notorious that it was he himself who did this. (See testimony of Hester White).

Now the point may be taken on the other side that the family could not have thought Carlton very insane, because

they said nothing about it and did not remove him from his trusteeship of the homestead ; but it will be observed that his duties as trustee were merely nominal, he had no opportunity and no power to injure the subject of his trust, and further, every one of his relatives from feelings of family pride and regard for Carlton himself if he should recover, were most reluctant to expose his real condition, and but for this unfortunate will it would probably never have been known to the public.

But the strongest and most convincing testimony in favor of the insanity of the testator is elicited from Dr. Brown (physician of the Bloomingdale Lunatic Asylum), the only witness and expert on the subject of insanity, called by the other side. The peculiar value of this testimony consists in the fact of its being wrung from an unwilling partisan witness. During the course of his cross-examination he testified as follows (page 424, *et seq.*) :

“Q. Is an insane delusion recognized as a test of insanity?

A. It is.

Q. Is it a high test?

A. It is.

Q. In what forms are insane delusions frequently exhibited?

A. In the forms of belief, unreasonable beliefs of all kinds, unreasonable and unnatural beliefs ; I may say that they are founded upon a diseased condition of the mind ; it may be extended to an indefinite and infinite variety of subjects.

Q. Are not persons afflicted with insane delusions very apt to imagine that they have been poisoned?

A. No, sir, I do not think they are very apt to, *some do*, but by the term “very apt,” I should suppose you meant very generally.

Q. Is it not a very general form of delusion?

A. No, it is not general, *it is frequent*.

Q. On the part of persons who are partially insane?

A. It is not unfrequent, but I cannot say it is a general delusion ; *it is a very frequent delusion*.

Q. If he had the idea that his mother instead of being his best friend was his worst enemy, that she was a base and vicious woman, that she was insane, and he was laboring under

those impressions at the time he made his will, when there were no sufficient grounds for such a belief, would you consider that he was in a proper state of mind to consider her claims upon his bounty?

A. No, I think not; if he were an insane man and his insanity consisted in insane delusions with respect to his mother, of course I do not think he was in a proper state of mind to appreciate correctly her claims upon his affections and bounty.

Q. Did you discover from the testimony that he believed his mother was insane?

A. I did discover that.

Q. Is it a common form or expression of insanity for insane persons to believe that other persons are insane who are really sane?

A. It is not uncommon.

Q. Well, is not this consistent with the theory that he was insane?

A. O, yes, certainly.

Q. Have I not understood you to say that all the circumstances that I have enumerated of delusion and unnatural conduct on his part toward his mother could be accounted for on the ground that he was insane?

A. I have said so.

Q. Are you prepared to say that he was sane?

A. No, sir; *I am not.*

Q. But all the circumstances to which I have called your attention specially are consistent with the idea of his insanity?

A. *They are; I think so; yes.*

Q. Have insane patients a proneness to die of diseases of the lungs, liver and digestive organs?

A. Yes, sir; many of them die of such diseases.

Q. Did you discover by the testimony that Carlton's lungs were diseased, and the immediate, if not the only cause of his death?

A. Yes, sir.

Q. What is monomania?

A. Monomania is strictly and properly a perversion of the rational judgment on one class of subjects.

Q. If a person thought he was poisoned by his nearest relative without any cause, would not you call that monomania?

A. Yes.

Q. Did you discover on reading the testimony that Carlton Gates had a suspicion that his mother was trying to poison him?

A. I saw that it was stated by one of the witnesses, a child.

Q. And he (a monomaniac) could talk about business and transact business of all kinds the same as ordinary people?

A. Perhaps not of all kinds; *business relating to that individual he might not.*

Q. Could he talk sensibly and rationally on any subject with which he was conversant upon which his mind was not disordered?

A. Many insane patients can do so, as a general proposition there is no reason why he might not.

Q. *Then Carlton Gates might have talked and acted in the manner he did before the gentlemen who were subscribing witnesses to the will and still have been subject to an insane delusion with regard to his mother?*

A. *He might undoubtedly.*" (p. 455).

The drinking of the hot water by Carlton, to take the coating off his stomach completely puzzles and dumbfounds this expert on insanity; he is utterly unable to account for it on grounds consistent with his sanity. Indeed he plainly intimates that he would never have believed Carlton could have done such an absurd thing unless it were testified to by a witness as respectable and credible as the attorney who drew the will (p. 445).

Now when a witness possessing the qualifications and experience of Dr. Brown, who evidently desired and intended to help the other side all he could—who couldn't see that Carlton had any antipathy toward his mother, I wonder if he could see a hole through a ladder, ten feet off, if he didn't want to—probably from friendship to Dr. Wood, is forced

by the facts to testify so strongly against them, their case must indeed be hopeless. If such is the best help their friends can give them, on what ground can they ask your Honor to decide this case in their favor? Why how would Carlton Gates himself have regarded such a will as this had he been one whit less insane than he was?

It appears from the evidence that many years ago his father made his own will. He thought it proper in view of the character and disposition which his son was developing to put it out of his power to spend the principal, and he gave him the entire income of his estate with the remainder to his issue. This will came to Carlton's knowledge, and what does he do? Why he takes his father by the throat and chokes him until the "detestable will," as he called it, which was intended to secure the whole estate to him and his children, was destroyed. He felt that he must have the whole estate to himself absolutely and without restriction or condition.

Now what would he have done to the old gentleman if he had known that he had made a will giving the bulk of his property to his particular friend the Rev. Dr. Hulbert?—*verily he would have made mince meat of him!*

And now in closing this branch of the case I respectfully submit, that the allegation of the insanity of the testator is established beyond a reasonable or possible doubt; and I maintain that if Carlton had killed his father or mother, as he had so often threatened to do instead of making this will, and if he was now on his trial for murder, the evidence in this cause would be abundantly sufficient to acquit him on the ground of insanity; and I am most happy that in this case we have only to deal with the *murderous "will,"* and not with the murderous deed.

I now come to consider the remaining branch of this cause, the subject of undue influence, and our proposition is, *that the will in question was executed under restraint and by means of undue and improper influence exercised upon the mind, or what was left of the mind of the testator.*

And here I have a duty to perform, which I feel to be the

most unpleasant and painful of my professional life, for it will be necessary that I should hold up to your Honor's condemnation, and to the condemnation of the world, the conduct of one for whom I had always entertained the warmest friendship as a man, and the deepest reverence as a minister.

The Rev. Dr. Hulbert, who has performed such an important part in the transaction in question, and who holds such a prominent position in this controversy, was the ancient and confidential friend and pastor of the Gates family.

It was in their house that he was received and entertained on his first visit to Yonkers, upwards of twenty-five years ago, then a fresh graduate from the theological seminary, in search of a settlement.

On his return to Yonkers, in the year 1852, after having been obliged to surrender his charge in that place for a few years, in consequence of some difficulty or dissatisfaction existing in his church, he was by this family most kindly welcomed and cordially sustained.

To show the nature of the feeling existing between them I will read from the letter in evidence, written by Dr. Hulbert to Carlton Gates in 1852, while the latter was in Paris.

" YONKERS, Dec. 20th, 1852.

CARLTON GATES—*My Dear Sir* :—I think that during a friendly smoke in your "sanctum sanctorum" we had both agreed that now was the auspicious moment for my return to this early scene of "my toils, my feelings and my fame." As to the latter it was slightly overshadowed it is true in certain quarters—[if it was under a slight shadow then I think it may now be said to be under a total and permanent eclipse]—but in the main, by the great mass of the people a truthful view was taken and I could at any moment summon from them a crowd of brave hearts, not only from the people of my own immediate parish, but from the public generally, for to borrow a term from the great Hungarian there is a "solidarity" of the people's rights and wanton injustice done to one is felt by all.

Amongst my kind and faithful sympathisers I have always

proudly reckoned your family, your father mingling here and there with the public has not failed prudently to interpose his favorable sentiment, whilst your good mother has not scrupled with boldness to vindicate the right.

I shall never forget their unchanging kindness, in which the entire household have shared," &c., &c., &c.

It will be observed that he here acknowledges in the strongest terms his obligation to both Doctor and Mrs. Gates and solemnly promises never to forget their "*unchanging kindness.*"

During his long residence in Yonkers, which as is well known was a continued but unavailing struggle against the unfriendly and even hostile sentiment of a large portion of its most influential inhabitants, he did not fail to receive the countenance and support of Doctor Gates, who, perhaps, more than any other person, was in a position to render him valuable aid and assistance, and who in addition, as the evidence shows, always attended his large family gratuitously.

His close and intimate relations with the Gates' family naturally made him acquainted with their domestic and private affairs.

He was an eye witness to the singular course of events which the testimony in this case discloses, as they transpired. He was well aware of the peculiar character and disposition of Carlton Gates. He saw him at the threshold of manhood possessing every qualification and surrounded by every incentive and inducement to apply himself to the business of life and win a support and position for himself, living upon his parents and leading a life of indulgence and ease. He saw that he was not content with a fair and liberal maintenance from his father, but that his mercenary nature craved and exacted the whole. He saw that Mrs. Gates, impelled by her inordinate affection for her son, was his most willing and efficient ally in seconding and following up his demands upon his father, "*not that she loved her husband less, but because she loved her son more.*" He saw the work of desolation and ruin going on in that household; that the father like some strong fort had for a long time held out, but was at length compelled to succumb to the combined attack. He saw him fly for his life from his

home, and his unnatural and monomaniacal son usurp his possessions and his position. It was his policy to maintain, and it seems he did maintain the confidence and friendship of all parties, a pretty sure indication that in reality he was true to none. Time and again he was called upon to mediate between them, but with no success, for in their joint presence he would not coincide with either party, and separately he would assure them that he thought each was right and the other was wrong; and it was on one of these occasions when he played the part of friend and mediator for the purpose of fixing the amount that Carlton should receive from his father that he became possessed of the statement or memorandum which his counsel has had the good taste to put in evidence to show what Dr. Gates was then worth, for the purpose I suppose of deducing from it the argument that he can afford to be plundered out of this portion of the estate.

If I do not overrate my own sagacity, I think I can here begin to discern and trace the selfish and mercenary schemes of Dr. Hulbert. Here was a large amount of property, its present possessors, two old parents; its prospective heir, an unmarried erratic son; discord already existing among them. The vulture sees his prey from afar. He hovers over his victim ready to make a descent at the first favorable opportunity.

From his new home and pastoral charge in White Plains, Dr. Hulbert keeps a bright lookout after things at Yonkers. On Carlton's return from Europe he hastens to call upon him; although announcing his intention to stay but a short time he seems to find circumstances so auspicious for his designs that he remains with him in private conversation all day. Doctor Gates testifies that his suspicions were then aroused that there was something wrong going on between them, for Dr. Hulbert's manner at the dinner table was embarrassed and unnatural, that he tried to joke but couldn't. *Now when Dr. Hulbert can't get off a joke, he must indeed have something important on his mind.* From this time forth the influence of Dr. Hulbert upon Carlton Gates is most apparent and most potent. It appears that they are in constant communication with each other both personally and by letter. Carlton's health was gradually but surely failing; this was apparent to all who saw him.

Now assuming that it was Dr. Hulbert's deliberate design and plan to ingratiate himself in Carlton's favor, and to supplant his mother and other relatives in his regard, for the purpose as we allege of influencing and inducing him to make his will in his favor, I propose to show that the events which followed are in perfect harmony with such a supposition.

Carlton had his first attack of sickness in March and April of last year ; the time for action had arrived ; his end could not be far off—one of the first steps to be taken was to get rid of the Nisbet family, consisting of Mrs. Nisbet (who was a sister of Mrs. Gates) and her two children, a son and daughter, both grown up. These persons had always made it their home, with Dr. Gates, and constituted a part of his family ; they had always lived in the utmost harmony with Carlton, his aunt Nisbet having for him the affection of a mother ; of course those near relatives while thus living in friendly relations with him would have claims upon him in the event of his making a will, which could not safely be ignored in favor of a stranger.

We find Carlton of a sudden, in the latter part of April last, picking a quarrel with them about some trifling thing, charging his aunt with having stolen some unimportant and valueless paper from his pocket, laying violent hands upon her, and they were obliged to leave the house. This disposes of them ; for how could it be expected that he would leave them anything when his estrangement toward them amounted in the language of the will "to complete non-intercourse?" and beside it is insinuated they had an abundance of their own and did not need it.

Dr. Gates, the father, had long and notoriously been the object of Carlton's aversion and antipathy, it could not possibly be supposed that anything would be left to him ; he also is reputed to be rich, and his name is not even mentioned in the will.

Mrs. Gates, the mother, is next to be superseded ; and her claim upon her son's affection and bounty would seem to have been of a character so sacred as to command the respect of both man and devil ; but we find that Carlton conceives the idea as it is expressed in the will, that she is "old and feeble (may God forgive her for being so), and incapable of taking

care of property and has an ample income of her own, and she does not need it ;” furthermore, she is an insane, base and vicious old woman and trying to poison him !

His parents and next of kin being in this summary and satisfactory manner set aside, who so likely and suitable to be selected as the recipient of his testamentary bounty as his particular friend, the Reverend Dr. Hulbert.

Now is not all this not only in harmony with, but strongly corroborative of the truth of the theory that Dr. Hulbert was the secret but active promoter of the result finally attained ?

But we are not left to surmise or conjecture as to his participation in this business ; there is positive testimony interspersed throughout the whole case showing his active agency in the making of this will, and in the shaping of things so as to give it an appearance of naturalness and plausibility.

He was as surely the source from which Carlton received his foul impressions with regard to his mother, as is the sun the source of light ; Carlton tells her that Dr. Hulbert told him she was a base and vicious woman ; Dr. Hulbert told Dr. Lee that Mrs. Gates was insane (what a remarkable coincidence of opinion between him and Carlton on this subject ; I wonder with whom the idea originated ?) ; and Carlton said to Mrs. Beebe that if she did not believe what he (Carlton) had been saying about “ that woman,” he would refer her to his friends, Dr. Hulbert and Mr. and Mrs. Darling, on the point of her being such a bad woman. And what had this “ good mother,” who had “ never scrupled to vindicate the right” in Dr. Hulbert’s behalf, according to his own admission, ever done to cause him to forget her “ unchanging kindness,” and to poison the mind of her only son against her ?

On the 10th of August last, Carlton is prostrated by his last sickness ; every member of the family has been on one pretense and another sent from the house. The course is now clear, and Dr. Hulbert seems to regard it as the “ auspicious moment,” once more to make his appearance upon “ the early scene of his toils, his feelings and his fame.” He is sent for by Carlton, and he at once comes, and as if by pre-arrangement, takes his place as master of the household. It was supposed by the family that Carlton desired a clergyman for the purpose for which clergyman are desired by sick

persons; and that Dr. Hulbert kindly came in his character as a clergyman. It was in this belief and confidence that he was allowed to see and attend upon him, and it would naturally be supposed that under the circumstances the first thing he would do would be to make a prayer. But does he do it? *Not a bit of it. His very first act is to go for a lawyer to draw this will!*

I am aware it will be said on the other side that Carlton had already sent for Mr. Romer, and had had an interview with him with regard to drawing his will the day before Dr. Hulbert arrived, and that it will be argued from this circumstance Dr. Hulbert had nothing whatever to do in the matter. But Mr. Romer also testified that at that first interview he had been finally dismissed by Carlton without receiving any instructions to draw the will, Carlton telling him he had altered his mind, that he thought he was going to get well, and requested him to make out his bill for his trouble, which he declined to do; which is the first time I ever heard of his refusing to avail himself of an opportunity to make out a bill, and I think he ought to have the full benefit of it. And it will be further observed that this act of sending for a lawyer to draw the will, does not in the slightest degree conflict with the theory of a prior and secret understanding between Dr. Hulbert and Carlton to that effect.

Now, however, on the arrival of Dr. Hulbert all doubt as to his agency in the transaction vanishes; he goes himself on that errand. Mr. Romer tells him that he has already been there and been dismissed; further that Drs. Arnold and Bowles did not think Carlton in a condition to make a will; Dr. Hulbert nevertheless urges it to be done. Romer also tells him that he did not think Dr. Bowles intended that Carlton should make a will so that the old people would get the property; Dr. Hulbert also thinks Dr. Bowles guilty of that base design. *The will must therefore be made to prevent the old people from getting the property!* It must be entirely certain from this, that Dr. Hulbert knew who would *not* get the property if the will was made, and does it require much of an effort of the imagination to believe that he also knew who *would* get it? What arguments Dr. Hulbert makes use of to convince

Romer of the necessity and propriety of Carlton's making a will do not appear in this case, but certainly they must have been entirely conclusive, for from this time forth Romer is his most active and willing agent in carrying the thing through.

According to Romer's testimony, Dr. Hulbert saw him in relation to drawing the will once, and sometimes twice every day of the week that it was under preparation (except on Monday when Romer was absent attending his mother's funeral), that he would go to his office, to his room at the Getty House and meet him in the street, and that on Tuesday he telegraphed to him at Sing Sing, where he, Romer, had been called on business, to come down to Yonkers and draw the will.

Although Romer in his first cross-examination denied most positively having seen Dr. Hulbert on the Sunday before the will was made (page 313), and denied that he was at young Shannon's funeral at all, which took place on that day, *and Dr. Hulbert sat by and heard him so testify without expressing the slightest disapprobation or dissent*; on his further cross-examination on a subsequent day, he admitted that he was there and did see Dr. Hulbert in the lecture room of the church immediately after he had preached the funeral sermon, *and that the will was the subject of their conversation*; and he further admitted that he had driven all the way from Pleasantville (12 miles) where his mother was then lying dead, *for the purpose of having that interview* (page 420).

Could Mr. Romer have forgotten such a circumstance as this? Was not his recollection stimulated by the fact that he saw witnesses in attendance to contradict him and to testify that they did see Dr. Hulbert and him together in the lecture room on that occasion? But as he has remembered about the "*hot water*," I don't think I should be too hard on him for forgetting about this.

When the will is prepared and ready for execution and the subscribing witnesses are in attendance, Dr. Hulbert is not present in the room; *but he is within call*, and on being summoned by Carlton to get his seal, he comes from the library, which was situated on the opposite side of the hall, about twelve feet distant, brings the seal, which we are told was in the form of an angel, and which must have been the only an-

gel in that house, and immediately retires again, and *I think I can see him looking through the key hole or crack of the door while the will is being executed.*

Mr. ROMER also swears that Carlton requested him to keep the making of the will secret from every one, and particularly requested him not to let Dr. Hulbert know that he was going to leave him anything in his will, and that he accordingly refrained from saying one word to him on the subject; that Dr. Hulbert kept himself perfectly *mum* too; asked not a single question; and would it not have been perfectly natural for him to have manifested a little, just a little curiosity under the circumstances to know how the will was going to be made, if he did not know? It is only the wise who ask no questions.

It occurred to me to ask him if the proceeding was all fair and right, what possible objection there could be to Dr. Hulbert knowing that he was to be a legatee; and the reason assigned by him was that if the will was contested by the old people, and it should appear that Dr. Hulbert knew what it was while it was being made, he being in attendance upon the testator at the time, it might afford evidence of undue influence on his part; that if he was acting as counsel in the matter (which of course he was not) he would advise just the course to be taken which was taken, and let him know nothing about it.

Now I regard this as the most important evidence given in this cause. It illuminates the whole of this dark transaction.

It affords a glimpse behind the curtain, and we can see what was going on there. Who can for one moment doubt that the author and instigator of this deed was the person most largely to be benefitted thereby? That the poor wreck of humanity whose death-stricken hand traced this trembling signature was but stimulated—galvanized into action by his powerful will? It shows with what deliberation this whole scheme was planned and with what coolness and determination it was executed; how thoroughly all the points of attack had been considered beforehand, and how carefully they had been guarded against.

*The will must not only be executed but in such a manner as to avoid furnishing evidence to set it aside.*

The sin did not consist in doing the thing, but in being found out.

Therefore particular care must be taken to leave no trace of the influence used behind. But step by step throughout this whole transaction you can track this arch schemer by his cunning, even as you can trace the serpent by its slime. As often happens in the commission of fraud and crime, the very measures taken to prevent suspicion are the very ones to attract it, and I know of no more significant or suggestive fact in this case than is here furnished by this lawyer.

And how completely, how absolutely must that poor creature have been subject to the power of his master? How thoroughly must he have been trained to respond to his will? To go through with this miserable farce of telling the lawyer not to let him, Dr. Hulbert, know what he was going to do for him, lest it might furnish evidence to set aside the will. And bear in mind Carlton's emphatic answer to Mr. Radford when he attempted to remonstrate with him on the injustice of leaving his father and mother out of the will. "*The subject which you mention I think I fully understand, Mr. Radford*" (p. 410). This evidence coming from the source it does must indicate with unerring certainty the author of this will. Under this flood of light he is as plainly to be seen as the sun at noon-day. And it is—it can be none other than this residuary legatee. It is true that we have not been able to produce witnesses to prove the precise arts, arguments, persuasions and importunities he made use of to win his victim over to his purpose, and prepare him for the commission of the final act. Such things are not done openly and in the presence of witnesses to be testified to; they are done privately, secretly, stealthily; but that they have been done in this case is as certain as that there must be a cause for every effect.

"Who sees the bullock with throat sever'd in twain,  
And the butcher with stript arm and bloody knife,  
Standing athwart the victim so freshly slain,  
But straightway knows 'twas his hand did take the life!"

And then as soon as this will is made his work is done. His mission of love and kindness to his dying friend is fully ended. He is now ready to go home; although he could re-

main in constant attendance upon him day and night, for upward of one week, during which the will was being prepared, the moment it is signed, sealed, witnessed and delivered—into his possession, it occurs to him that his own long neglected family and pastoral duties must be attended to, and in the self same hour he goes to a livery stable and orders a carriage to convey him to White Plains—but on reflection he still hesitates, lingers, until the next morning—to be well assured that his dear friend is too far gone to revoke it or execute another; when with the happy feeling that he has now fully performed his duty as pastor and friend, and fully repaid his life-long benefactors for their “unchanging kindness” to him, he takes his departure and leaves their wretched son to die alone!

Now for what other earthly purpose, I would ask, was he there than for the one which he accomplished? This whole case can be summed up in a single sentence. **HE WENT THERE TO GET THIS WILL AND HE GOT IT.** Dr. Lee testifies that in a conversation he had with Dr. Hulbert the day after Carlton's death, he (Dr. Lee) said to him that he was very glad to know that Carlton had called in a clergyman, and was gratified to know that he visited him for spiritual advice, and that Dr. Hulbert replied: “*Oh, no; Carlton never opened the subject to me, nor I to him!*” And this is not denied; therefore it must be taken as a fact both proved and admitted in the case, and what a fact it is! This minister of the Gospel gaining admission to this dying man, who he says was perfectly *sane, sane and rational* for one whole week before his death, for the purpose ostensibly of performing the most sacred duty of his profession, and *never once mentioning to him the subject of religion!* Was such a thing ever before heard of in a Christian land! Why, sir, is not such a minister capable of doing all and more than all that we charge against him in this case? Oh, what an opportunity was here afforded for the ministrations of his holy calling! To illustrate and commend before the world the beautiful and sublime precepts of the Gospel! To turn the heart of this poor, erring, wayward dying son to his old parents! To seek to reconcile him before it should be forever too late, to his father on earth and to his Father in Heaven! And how brightly would this rescued soul have shone in the eternal crown of his reward!

But in what manner has he acquitted himself of the solemn, the awful responsibility resting upon him in that chamber of death? Here is the result of his labors and his prayers [holding up the will]. There can be no doubt, no mistake whatever about it, for it bears the signature and the seal of the dead man. It is attested by three of the most credible witnesses of the Village of Yonkers; and here he has been week after week, and month after month, with face of brass and nerve of iron, surrounded by his hireling pack of witnesses, subsidized from this plundered estate, arrayed against these old parents and next of kin, invoking your Honor's judicial sanction upon this "DEED WITHOUT A NAME!"

Now I propose to call your Honor's attention to some legal authorities on the subject of fraud and undue influence.

The following rules or principles deduced from adjudged cases indicate the kind and degree of influence necessary to avoid a will:

1. To destroy the freedom of the testator's will, and thus render his act obviously more the offspring of the will of others than his own.

2. That it must be an influence specially directed toward the object of procuring a will in favor of particular parties.

3. If any degree of free agency or capacity remained in the testator, so that, when left to himself, he was capable of making a valid will, then the influence which so controls him as to render his making a will of no effect must be such as was intended to mislead him to the extent of making a will *essentially contrary to his duty*; and it must have proved successful to some extent, certainly (*Redfield on Wills*, p. 524).

In the case of *Gardner v. Gardner*, 34th N. Y. Reports, p. 155, DAVIES, Justice, says: "Undue influence is the control of another will over that of the testator whose faculties have been so impaired as to submit to that control so that he has ceased to be a free agent and has quite succumbed to the power of the controlling will. \* \* It is when an influence unduly exerted over the very act of devising, so as to prevent the will from being truly the act of the testator, that the law condemns it as a vicious element of the testamentary act. \* \* \* In seeking to ascertain whether an act has been done by a

*particular person it greatly aids in arriving at the truth to inquire who had a motive to do the particular thing, 'cui bono fuerit,' is always a pertinent and important inquiry."*

The fact that the will is unreasonable on its face, when taken in connection with the amount of property and situation of relatives, is properly to be considered in judging of the state of the testator's mind (*Clark v. Fisher*, 1 Paige, 171). The fact that the will was drawn by the beneficiary, or under his direction, raises at least a presumption of undue influence (*Crispell v. Dubois*, 4 Barb., 393).

If the provisions of a will, executed by a testator, differ from his previously expressed intentions, and differ in favor of those who stood in confidential relations with him, it is *prima facie* evidence of fraud and undue influence (*Lee v. Dill*, 11 Abb. Pr., 214).

*Undue influence may be proved by presumption, from facts unrebutted by the party charged therewith (N. Y. Surrogate's Court, Matter of Welsch, 7 N. Y. Leg. Obs., 153 ; Leacycraft v. Simmons, 3 Bradf., 35).*

In every case where a will is offered for probate the burden of proof is on the proponent, and he must satisfy the conscience of the Court that it is the last will of a free and capable testator (2 Moore, 481).

When a gift is disproportionate to the means of the giver, and the giver is a person of weak mind, of an easy temper and easy disposition, liable to be imposed upon, the Court will look upon such a gift with a very jealous eye, and will strictly examine the conduct and behavior of the person in whose favor it is made, if it can discover that any arts or stratagems, or any undue means have been used by him to procure such gift ; if it see the least speck of imposition at the bottom, or that the donor is in such a situation with respect to the donee as may naturally give him an undue influence over him : if there be the least *scintilla* of fraud a Court of Equity will interpose (*Sears v. Shafer*, 1st Barb., 408).

A Court will set aside instruments executed between persons standing in the relations of parent and child, guardian and ward, physician and patient, solicitor and client, and in various other relations in which one party is so situated as to

exercise a controlling influence over the will and conduct and interests of another; in some cases undue influence will be inferred from the nature of the transaction alone; in others, from the nature of the transaction and the exercise of occasional or habitual influence (*Court of Appeals, 6th N. Y., 286*).

Beside the authorities cited there is to be found a vast number of others to the same purport.

One of the most important facts bearing upon the question of undue influence in the present case is, the sudden and total change in the testator's feelings and conduct toward his mother. *Our theory is that his mind had become extremely weak and shattered and peculiarly subject to insane delusions and susceptible of improper and undue influence from the effects of his disease, and that the more sane and rational he is made out, the more irresistible is the conclusion that the will in question was executed under undue influence.*

At the time this will was executed, it appears that his former will made just before his last visit to Europe was in existence, in which, as the evidence shows, he had given the whole of the property to his mother. The will in question revokes and annuls this former will, and gives the same property to strangers, and the principal portion of it to the individual who had charge of the testator, and under whose immediate supervision and at whose urgent behest it was executed. This circumstance alone is sufficient to make out a *prima facie* case of undue influence against him within the authorities cited. *Here is the opportunity, the motive and the deed.*

Now, if ever a person in the world was called upon to explain suspicious circumstances against him and to vindicate his innocence of an act imputed to him, Dr. Hulbert is in this case. If he were guiltless, how easy would it have been for him to have gone on the stand and said so? But his lips have remained sealed. He has been in personal attendance during the whole of this protracted investigation, and has not vouchsafed one word of explanation as to his conduct in this matter; although his co-executor, Dr. Wood, and the attorney who drew the will are produced and examined as witnesses in support of it, he, who of all others, should know and be able to tell the most about it, carefully avoids going upon the witness stand. His

counsel prefers to allow the damning facts proved against him to stand wholly uncontradicted and unexplained rather than to expose him to the ordeal of a cross-examination ; on the principle I suppose that "it is better to endure the ills they have than to fly to those they know not of." How can he expect your Honor to vindicate him when he has not one word to say in his own behalf ?

It is entirely evident from the testimony of Mr. Romer, that he drew this will solely and exclusively in the interest of the residuary legatee. He gives us this singular explanation as to why the \$20,000 of stock which Dr. Gates had given to Mrs. Gates in lieu of her annuity, and which Carlton admitted belonged to her, but which stood in his name the same as all the rest of the property, was not secured to her, or at least referred to as being hers, in the will. He admits that Carlton told him when he gave him instructions to draw this will, that this stock belonged to and should be transferred to his mother, but he omitted all allusion to it in the will, and after it is executed he made a *private memorandum* or "schedule," as he calls it, to the effect that this stock belonged to Mrs. Gates, and directing the executors to transfer it to her ; but which "schedule" was unsigned and unwitnessed, and was never even seen by the testator, and moreover its very existence was unknown to every living being excepting the party who drew the will, and Dr. Hulbert. I asked him this question (p. 357) :

"Q. Now what was your object in doing the business in that way instead of putting it in the will ? If you thought of it before and intended to have the schedule prepared afterward to be executed, what was your object in putting it in that shape rather than putting it in the will itself ?"

To which he replied :

"A. My object was to get the will executed ; there had been so much delay that I wanted to get the will executed, and then I intended to lo up the rest of the business, so far as the schedule was concerned, and have the matter finally arranged."

So Dr. Hulbert must be secured first, and at all hazards ; the interest of the old mother was but secondary and subordinate, and furthermore, I think that the plain object and intent

was to cheat her out of this stock altogether if it possibly could be done. I have no doubt that Carlton Gates, insane, wicked or unduly influenced as he was, still felt that this stock was sacred to his mother, and intended that she should have it ; but that a fraud was meditated even against him.

If the will was not contested, this "schedule" would be suppressed and this stock would go to swell the residuary estate, and be pocketed by the residuary legatee ; if it was contested, the "schedule" would be produced as it has been to show that Mrs. Gates was not stripped of every farthing, but that she had \$20,000 left. In other words, *it was to serve as a sort of safety valve in case their boiler should get in danger of bursting.* My point is not, as the counsel on the other side seems to suppose, that under the circumstances disclosed by the evidence in this case, Mrs. Gates cannot enforce her claim to this \$20,000 in a suit brought for that purpose, for now we have the evidence to sustain it ; but it is that this large amount, *her all*, was placed by this lawyer of Dr. Hulbert, in such a situation that it could either be kept by Dr. Hulbert or given up to its rightful owner according to the exigency of his case, and he thus pays another installment of his debt of gratitude to this "good mother" for her "unchanging kindness" to him.

I would also call attention to the fact that in the first draft of the will, no specific mention was made of the homestead at Yonkers, and that that also would go to the residuary legatee if the testator had power "to testate" upon it. The will however, as executed was altered in this respect, and the homestead was given to the village of Yonkers. Now why was this change made ? My solution of it is this, that the author of this will at the time the first draft was prepared was not aware that Carlton had no power to devise the homestead ; he supposed that he had such power. On examining into the matter, however, he must have discovered that he had no right or power to devise it to any one, that he simply held it in trust for his mother ; that her will giving it to him was wholly inoperative and ineffectual to vest him with the title during her lifetime ; that only her death could induce any legal operation or effect to her devise to him (*Court of Appeals*, 1861, *Moultrie v. Hunt*, 23 N. Y., 394) ; and it was therefore conclud-

ed to give the homestead to the village of Yonkers. That noble mound crowned by the Gates' mansion would be a splendid castle in the air with which to tickle the people of Yonkers; they would undoubtedly fly to his rescue and be valuable allies in the support of the will; but in the event of its being sustained, he, the residuary legatee would have the satisfaction of swallowing the oyster, and they would get the shell. It must also be borne in mind that Mr. Romer had just been appointed counsel to the village, and it was at his suggestion that Carlton made this devise to the *village* instead of the *town*, and that he has assumed to appear in behalf of the village in his capacity as corporation counsel to insist on the probate of this will. Thus the thing could be worked through very nicely and the people of Yonkers without their leave or license, or even knowledge were put in a position of giving their aid and countenance to a transaction which they utterly repudiate and condemn, and which is made fully manifest by the prompt action of the Board of Trustees in directing the counsel's unauthorized appearance in this case to be *withdrawn*, on the fact coming to their knowledge.

Another significant feature of this case is the codicil which was prepared to be executed; so great was the anxiety and haste to get the will signed that Mr. Romer forgot to insert any restriction or limitation in it as to the nature of the use of the homestead by the Village of Yonkers. On his attention being called to the omission, this codicil was prepared to supply it, *but it could not be executed because Dr. Hulbert had gone off home with the will in his pocket*; and the codicil should properly be annexed to and form a part of the will. After waiting more than a day for Dr. Hulbert to return—but in vain—and being told by Rose (and this witness Rose seems to take the greatest satisfaction in assisting in the alienation of this property from the family—probably because he thinks he sold the homestead lot to Dr. Gates too cheap), that if he had any more papers to be signed by Carlton, no time must be lost, for he was dying; Romer determines to have the codicil executed anyhow. He prepares it with the utmost dispatch; summons the subscribing witnesses and rushes up to the house, but he is too late; he had but undertaken *to run a race with Death*, and he is beaten by his grim competitor. Death had got there before him, and the codicil remains unexecuted.

Now it will be particularly noted that this proposed codicil thus prepared by Romer, provides that in default of the Village of Yonkers accepting the devise of the homestead upon the conditions and subject to the restrictions therein contained, *that also should go to the residuary legatee*. And this furnishes another striking illustration of the truth of the proverb "that in the neighborhood of Rome-r all the roads lead into Rome." So completely had Romer been imbued with the spirit of his principal; so subservient and willing a tool was he for the accomplishment of his purpose that he knew exactly what to do or to get the *testator* to do for his interest in his absence. The testator of course had nothing to do but to sign the papers which were laid before him.

And again, does this bequest of the homestead to the village indicate any forethought or reflection on the part of the testator commensurate with the importance of such an act? Had he matured any plan as to its use or support as a public gift? It was worth \$100,000 at least, and yet this large amount of property is attempted to be disposed in an instant, thrown to the dogs as if were. The sole object of the testator seems to have been to alienate it from the family. Does this look like the act of a rational sensible man, one having a sound and disposing mind? Is it not more consistent with the idea that it was done in the interest and for the protection of the residuary legatee?

The bequest of the collection of curiosities, &c., to Dr. Wood, and the appointing of him co-executor can be accounted for on the same theory; he was supposed to be a man of position and influence; his name and association would give character to the transaction; and he would be delighted to have those "pretty things." He was also one of the physicians who attended upon the testator; it was made to his interest to testify as he has tried to do in favor of his sanity in order to get his own legacy.

Now it is not claimed that Dr. Wood was a party to or fully comprehended the scheme of Dr. Hulbert. But on all the proof we do insist that he is an accessory after the fact. That he has proven himself a willing auxiliary for the accomplishment of Dr. Hulbert's purpose. He admits that he knew a will was being made; that Carlton himself told him

he intended to leave him his cabinet and library, and make him an executor ; (*and if Carlton told Dr. Wood, who only saw him three times during his sickness, what he was going to do for him, can it be doubted but that he also told Dr. Hulbert, who is also an executor, who was with him all the time, what he was going to do for him ?*)

But Dr. Wood seeks to justify his conduct in the case and his claim to the testator's generosity on the ground that he had in former years rendered a great service to Mrs. Gates. He says that he prevented a sister of hers, an old and feeble lady, whom he attended as physician, from making her will in the absence of her relatives, in favor of strangers, so that the property remained in the family ; whereupon he is asked this question, (page 495) :

" Q. I ask you now, why you did not take the same friendly interest in Carlton Gates ; and when he told you that he wanted to make a will why you did not advise him not to make a will without the knowledge of the family ?"

And he gave us this luminous and satisfactory answer :

" A. Well, I cannot tell you, sir—I did not ; I will say another thing—but, no—I have no right to."

The legacy to Mrs. Darling of \$10,000 is another striking proof of the liberality of the getters-up of this will in the disposal of property which did not belong to them.

The only earthly claim which the evidence in the case shows that this lady had upon the testamentary remembrance of the testator was, that she and her husband had assisted in slandering and blackening his mother's character in his estimation, and poisoning his mind against her.

In this connection I will repeat a little from the testimony of Mrs. Beebe :

" Q. Who did he (Carlton) refer you to as witnesses to confirm the statement he made about his mother ?

A. He said that if I did not believe what he had been saying about *that woman* he would refer me to his friends, Dr. Hulbert, and Mr. and Mrs. Darling.

Y. On what point ?

A. On the point of her being such a *bad woman* and not keeping a decent——" (p. 148).

Now on the principle that Mrs. Darling was entitled to \$10,000 for what she did in this blackening and poisoning business *I do not think it can be disputed that Dr. Hulbert was entitled to receive ten times as much for what he did ; but the real object in giving this large legacy was to give plausibility to the bequest to the residuary legatee, and to make Dr. and Mrs. Darling witnesses, in case the will was attacked ; and if they could have testified to any circumstance in favor of Carlton's sanity, I would ask why they were not called ?*

And the remaining legacies in like manner seem to have had their origin in the interest of the residuary legatee.

The woman Migy, who was invited by Mrs. Gates to make her home with her during her vacation, for company, and because she was afraid to be alone with Carlton, also receives a subsidy from the enemy. The amount is first fixed at \$100, but on secret consultation it was considered that she might be worth more than that, and it is increased to \$500.

Mrs. Salt the housekeeper, and the two servants, Ann and Margaret Fitzpatrick are thought to be worth \$50 apiece, and they get it. The nurse Higgins was accidentally omitted from the will, but Carlton says that it is not necessary to alter the will for that—Dr. Hulbert will pay him \$50 too.

Now it will be observed that it was thus made *to the interest* of every person employed in that house to support this will and they are paid according to their grade. And is it not a most remarkable circumstance that none of these persons are called as witnesses, but the two Fitzpatrick girls, who were employed in the kitchen and knew the least of what was going on up stairs ? Although Mrs. Migy and Mrs. Salt, who were about Carlton all the time, are subpoenaed here as witnesses on the other side, the senior counsel on having an interview with them shakes his head and they are sent off home unexamined. The nurse Higgins, is not called either ; I will undertake to say that the reason why they were not examined, was not that they knew too little, but because they knew too much ; of course we did not need them, our case is made out without them.

Again, we find Dr. Hulbert immediately after the funeral, meeting the servant girls at Dr. Reinfelder's, to pay them off; their month was not up yet by more than a week, but he pays them the full month's wages, and they at once leave. What another kindly act to this "good mother" for her "unchanging kindness" to send all her servants off in the midst of her affliction and helplessness? But then it was not prudent to allow them to remain after he left—*they might tell tales*.

I have no doubt that a strenuous effort will be made by the other side to exonerate Dr. Hulbert from the charge of excluding Mrs. Gates from the house and to put the responsibility of that upon the Doctors. But let us examine the evidence a moment and see how the fact is. Dr. ARNOLD testifies as follows:

"Q. That feeling (of antipathy) on the part of Carlton toward his mother continued down to his last breath, didn't it?"

A. No, I should judge not, so far as any excitement was concerned; he spoke of his mother with perfect calmness when he alluded to her being in the house the last week, and he could not have done that the previous week.

\* \* \* \* \*

Q. Did she not express a strong desire to see him?

A. She did.

Q. How did you then without his making any allusion to his mother, how did you come to take the responsibility to yourself to advise her to keep away from his dying bedside?

A. During the last week there was no question about it; I neither asked her to go away nor to come there; I had nothing to do with it for the last few days.

Q. I understood you to say that during the last week of his life you did not ask his mother to keep away from him?

A. Not that I recollect.

Q. You made no such request or gave no such indication to her?

A. Not after the first week.

Q. You never advised her to keep away because it would endanger him after the first week?

A. Not that I recollect.

Q. Who did advise her?

A. I cannot say about that.

Q. You did not?

A. No, sir.

\* \* \* \* \*

Q. When did you expect that Mrs. Gates would have an opportunity to visit him?

A. I had nothing to do with that.

Q. It was not within your professional duty to bring relatives together when one was about to die?

A. I always leave that to the surroundings; I merely post them as to the condition of the patient.

Q. Who were the surroundings in that house, and the person to whom you made your report?

A. The person to whom I made my report was *Dr. Hulbert* (pages 210, 211).

*And here we come right into ROME again.*

Mrs. Gates testifies in reference to her going to the house:

"Q. Were you there again?

A. No, sir; he told me never to come near the house.

Q. Who told you that?

A. *Mr. Hulbert*.

Q. On how many occasions?

A. Well, twice; at one time I wanted to see him and know particularly how Carlton was, and had him come to Dr. Arnold's; and he said: "It won't do for you to come to the house, Mrs. Gates," and I did not go to the house; *this was on the day or the day before the will was executed*" (p. 78).

Now no matter from what direction we probe this ugly transaction we find *Dr. Hulbert invariably at the bottom of it*. And in this connection I will read a brief extract from the opinion of Judge DAVIES in the case of *Delafield v. Parish* (25 N. Y. R., p. 9).

"Direct evidence of her (Mrs. Parish's) control in these matters, of her actual exercise of undue influence in procuring the will to be executed, could hardly be expected, the means of keeping the influence out of sight were too many and of too easy application, *but when such is the array of cir-*

*circumstances, when such a result is obtained without any more substantial apparent cause, we are justified in saying from the evidence that the only cause to be inferred which is in the least degree adequate to produce the result is a long continued persistent, overpowering influence to which his condition rendered him peculiarly subject, and which she was as peculiarly in a position to exercise."*

We therefore claim and insist, that in view of all the facts and circumstances disclosed by the evidence in this case and the authorities to which I have called your attention, the conclusion is irresistible that undue influence was exercised upon the mind of the testator in the making of this alleged will—and that it was exercised by the individual who had the best opportunity and the largest interest to do it—the residuary legatee.

I might mention very many other features of this case, all corroborative of this view of the matter; but I feel that before a person of your Honor's intelligence and sagacity, and experience in sifting testimony and getting at the truth, it would be time almost wasted, and with an apology for the large amount of time I have already occupied, I will hasten to bring my remarks to a close.

Now on a survey of this whole case, where is the equity or merit to support the claims of these strangers to this estate? What have they ever done to entitle themselves to a penny of it? Should they be enriched by giving them money which they have not earned and these old parents be impoverished by taking from them that which justly belongs to them? Is your Honor prepared to establish a precedent of this kind to serve as an encouragement, as a premium for similar practices in future?

Oh, it will be said on the other side that a man's last Testament is a sacred thing, and it should be upheld whatever may be its character or the consequences; and so I say, where it is clearly established as the offspring of a sound mind and unfettered will. But when as in this case every element of testamentary capacity is lacking, and the testator was subjected to undue influence and interference of the grossest and most palpable character, it is a misnomer to call the instrument a last Will and Testament; it deserves the execration instead

of the sanction of the Court, and I have no doubt it will receive it.

It may also be said that Mrs. Gates still has her life estate in the homestead, and the \$20,000 bank stock which they have not succeeded in taking from her, and therefore can still subsist if deprived of the residue of the estate; and we have this impudent young lawyer swearing that *he* thought that sufficient for her; that he did not think that she ever spent more than \$2,000 a year for herself. But how could she maintain herself in the home where she has always lived, and where she has a right to live, on the income of \$20,000? Why, the taxes alone would absorb every dollar of it.

It will then be urged that her husband should support her; but it will be remembered that with her son's advice and consent, and relying upon his restoring her property to her by making his will in her favor, if he died first, she accepted the \$20,000 bank stock in lieu of her annuity, and in full of all claims and demands upon Doctor Gates; and further, he is utterly unable to do so, his means being barely sufficient for his own support, notwithstanding the stories so industriously circulated by the residuary legatee as to his great wealth.

And, finally, a most violent assault will be made upon Doctor Gates for presuming to contest this will in favor of his old friend and pastor Dr. Hulbert, who had so completely imposed upon him and wormed himself into his confidence that he had been selected by him to perform for him the last offices of friendship, to take charge of his remains when he should be dead, to preach his funeral sermon, and to put a suitable inscription upon his tomb stone. How this precious friend of his would like to have done all that for him years ago! He would not now be here to contest this will.

It is true that Doctor Gates would never have thought of contesting the will Carlton had made in favor of his mother, although he himself was entirely excluded from it. It would have been generous to her, if not just to him. He had every reason to believe that this will was still in existence until after his son's death; he never dreamed of what was going on. Dr. Hulbert well knew when he wrote the letter to him about his son's sickness he would not deem it prudent to visit him unless Carlton should express a desire to see him;

and for Dr. Hulbert to promote such a desire would have been entirely inimical to his own purposes and interests.

And I think in view of all the facts the argument that Dr. Gates has no ground to dispute this will in favor of strangers, because of Carlton's hostility toward him, is the weakest and most fallacious of any that can be made, for as I have shown before, this very hostility was but the result of a delusion; it existed only on the part of the son, and for causes entirely imaginary and groundless. The evidence utterly fails to show the least justification for it. Because his father well knowing the nature of the infirmity from which it sprang, has during his son's life suffered in silence rather than reveal the truth to the world; now that he is dead, must he still hold his peace, and permit this final and crowning wrong against him to be consummated! Because he has suffered twenty years of martyrdom, must he be held to have waived and forfeited his right to defend his interests and the interests of his family against this most atrocious invasion! I think these considerations furnish all the stronger reason why he should now be redressed and vindicated.

But it has been tauntingly thrown out on the part of this residuary legatee. "Have you no regard for your dead son that you spread all his enormities before the public? Have you no regard for yourselves, that you make it known you had such a degenerate, wicked son? Have you no shame that you unroof your house and expose to the gaze of the world the dreadful, sickening scenes which have been there enacted?"

We say to him, in reply, "Sir, it has indeed been our sad lot to have had an ungrateful, undutiful son, who, if he was sane, as you say, was a very thief. We are both grieved and humiliated to acknowledge it. But what have we done to be ashamed of? We have committed no fault, no wrong against any one—and least of all against you. But who are you that you heap such reproaches upon us; that you dare cast the first stone at us? You are a stranger to our name and race, and you are seeking to engraft yourself upon us. You are endeavoring to reap a golden harvest for yourself from our misfortunes. You are the would-be recipient of the spoils which have been filched from us. You are the violator of our confi-

dence. You have repaid our "unchanging kindness" with the basest and blackest ingratitude. It is you who have made it necessary to unroof our house to the gaze of the world. And last, though not least, like another false disciple you have betrayed your Master's cause for filthy lucre!"

I have now reviewed this case according to the best of my poor ability; I think I have demonstrated that this alleged will comes within the condemnation of the law, both as the offspring of an insane delusion and an undue influence exercised upon the mind of the testator; I think I have shown that it is altogether an unreasonable, unnatural and wicked thing; that it does not possess a single feature to commend it to the favor of God or man; and I appeal to your Honor in the name of Justice and Humanity, of Morality and Religion, to withhold from it your approbation. I do not think that you can find it in your head or your heart to sustain this will; and I am sure I cannot see it in your benevolent countenance. It should be spurned from the threshold of every Tribunal. It should be hurled back into the face of whoever should have the hardihood, the audacity to present it. The Court-house in which it should be upheld as a legal and valid instrument, would be but fit to be leveled to its foundations; aye, and the very ground on which it stands should be upturned by the ploughshare! Other courts have not hesitated to declare similar transactions of a much less vicious character, null and void; and is this case which embodies every obnoxious element known to the law to stand forth as an exception? The whole country is watching the progress and awaiting the result of this investigation with the profoundest interest; curious, anxious to know whether such a monstrosity in the shape of a will can find favor in a Court of Justice. The people of Yonkers, in whose midst it originated, are not the least attentive observers. Certainly, no event which has ever there transpired, has created a deeper sensation. A truthful view of the matter is taken by the great mass of the people, and they do indeed vindicate the truth of the saying quoted, that "there is a *'solidarity'* of the people's rights, and wanton injustice done to one is felt by all."

Now without your Honor's sanction, this deed cannot be

consummated. This will, although executed with all the formalities prescribed by law, remains but as so much blank paper; this whole scheme of repression and plunder, so cunningly devised and so skilfully carried out must come to naught. If on the other hand it shall receive your sanction (which God forbid), it becomes a thing of life and power, and completes the misery and ruin of these long suffering and deeply afflicted old parents. And have they not, I would ask, suffered enough, and more than enough already? Have they not drank the cup of bitterness to its very dregs? They are both beyond the allotted limit of life; the days of their years are upward of three score years and ten. Should they not now be permitted to descend to the grave in peace? Although they have been so cruelly, so wickedly recompensed, they have never ceased to love their son. They have loved him notwithstanding all his faults and transgressions—loved him, as only parents can love a child.

They could not if they would, and they would not if they could, stifle the yearnings of nature. Even now, can this grief-stricken old father from the very depths of his anguish, exclaim in the language of another father of old, who in like manner was persecuted and hunted down by his own offspring, "O MY SON ABSALOM! MY SON, MY SON ABSALOM! WOULD GOD I HAD DIED FOR THEE. O ABSALOM, MY SON, MY SON!"

He who should have been a comfort and a prop to them in their old age; who should have closed their eyes and given them sepulture; who should have perpetuated their name and lineage after them, has gone before them. He has scarcely lived out half his days.

How forcibly and how fearfully is the Divine command and admonition here again inculcated—"HONOR THY FATHER AND THY MOTHER, THAT THY DAYS MAY BE LONG IN THE LAND WHICH THE LORD THY GOD GIVETH THEE."

And now, in conclusion, I would again pray your Honor to render your decision in favor of these contestants. It will be a just and righteous judgment; it will be as a balm to their lacerated and bereaved hearts; it will send a ray of joy and gladness into their desolate childless home; and rest assured that it cannot fail to receive the commendation of your fellow men and the approval of Heaven.

## ARGUMENT OF MR. LYON.

♦♦♦♦♦

[Mr. LYON had commenced his argument when the Stenographer came in.]

As I stated, this will was executed by the testator in the presence of three witnesses, and the formality of that execution is admitted. But that admission carries more than that. The witnesses who were called around this man on the occasion of making this will were his neighbors, two of them had been brought up in the same town with him, and the third had lived in his neighborhood for more than twenty years. They were men who had known him as well as anybody did know him outside of himself. These men had all the opportunities of judging of his condition at the time, and their testimony upon that subject is unhesitating, that he was of sound disposing mind and memory. This makes a conclusive case upon the factum of the will, and upon the question of the competency of the testator to devise real estate, until something is established as ground for declaring that at that time he was not of sound and disposing mind and memory; that he had not sufficient mental capacity to know what he was doing, and to perform the business of making a will. That issue is tendered her. It is claimed on the part of the contestants that they have proved that on the 19th day of August, on the occasion on which this will was executed, that these witnesses were all mistaken, and that he was not at that time of sound and disposing mind and memory, but to the contrary that he was then, and, if I understand this case at all, he

must have been almost from his birth—an insane man. That is, that his mind was laboring under such a mental delusion, that it was incapacitated for healthy action, so that no act of any description flowing from it would be a sound and legal act. General propositions of law have been stated here this morning,—which no one denies ; but the argument has been carried on precisely as this case was tried, on a series of assumptions that have not been proved and that do not exist. Arguing from those assumptions, certain legal doctrines have been asserted that nobody doubts. The counsel questioned the witnesses precisely upon that theory. He assumed certain facts ; and then would ask what would be the result ?

If those facts were here, no contest would be made over these conclusions of law. I remarked that the counsel in quoting his authorities, stopped precisely at the point where the elementary writers give the converse of the proposition ; but your Honor will see that even in those cited, there are a great variety of instances given where parties may have a feeling of dislike or even of hatred toward others upon perhaps insufficient cause, and yet that hatred has never yet been dreamed to be a case of mental delusion so as to impair the act of the party. The mental delusion must be a case of absolute insanity upon the subject of the delusion. The delusion must not only be without foundation,—but the party must be as insane on that particular subject, as a person generally insane is insane on all subjects.

And now if your Honor please how is this will attacked, and in order to approach the subject properly, some reference to the testator's early life is necessary, and this will be upon a state of facts which everybody concedes. He appears to have been brought into the world by parents who even at that time were at variance. There does not seem to have been any period of his life when his mother was not using the child to thwart the views and wishes of his father ; bringing him up in a way which he believed would be the ruin of the child. He had himself,—with all the feeling and interest he has to win this case, to fall back upon the long record of wrongs that he had suffered at her hands. He could not even now, when a sort of truce had been patched up by this bond of a common interest, resist the temptation of turning

upon her on the stand, and charging the testator's unfilial conduct to the over-indulgence of his mother. Going back through the testator's life, we see that the true key to his conduct, is found in the unfortunate difference between his parents. One of them frail in mind, loving her child above all things, and indulging him all his whims and caprices; bringing him up to believe that his father's property was his, and that every farthing which his father kept from him was money which by right was his; indulging every taste and appetite of his early life, and culminating in the extraordinary document in evidence which she signed as her will, exhibited a feeling for her son which would do everything in the world which she thought would contribute to his pleasures whether lawful or otherwise. The spectacle of a mother providing for the illegitimate children of her son who were yet to be born, is indeed a new phase. What chance had an only child born with an ardent temperament, and with a mind showing everywhere the greatest tendency to exaggerate everything, under such circumstances? This tendency to exaggerate was shown when speaking of the commonest subject. I refer in this connection to a matter which occurred twelve years ago, when it is not pretended that he was insane, or under any insane delusion. Writing to his father in relation to some of his debts he uses language of the most exaggerated character, and which he evidently thought conveyed only the idea of his high displeasure. In this letter he says: "I call the curses of Heaven down upon your head." On reading such words from a son to a father, one is naturally shocked. But with him, he had been taught to consider his father as his enemy, and he uses this fearful expression as a common mode of conveying his thoughts. No one claims that he was then insane, or acting under any insane delusion;—and yet there is not shown an expression so extravagant or revolting as this in the whole case. His subsequent letters to his mother, two of which only out of all of his letters have been put in evidence, contain nothing so unnatural as this, and one of them was written during his severe illness in the Spring when he was under the effects of fever and stimulants. This was the character of his mind, spoiled by over-indulgence. All of its bad qualities were de-

veloped, and none of his good brought out. We now see the man presented as he is here to-day. It is a sad thing, sir, that we have to look into his uncovered grave,—that we have to listen to transactions that should never have seen the light,—but other hands than ours have done it and they must abide the consequences. But placed as I am in this case, standing by an act which was as deliberate and as well-considered as any act ever performed by a human being, it is my duty to speak of the case exactly in the language which belongs to it, and to develop its facts precisely as they exist. In doing so I shall be as tender as I can, particularly of Mrs. Gates, yet the facts develop a state of things which must be presented in its natural colors, and in doing so I shall not go beyond the plain line of my duty. The testator's father is the only witness to acts of violence before those which occurred in the two last periods of his illness, and he goes back years ago and presents the picture of a son, about whom at that time no pretence of insanity is made, using or threatening acts of violence upon the person of his father, for the purpose of procuring money. Has anything in this case been shown so bad as this, and yet the father never dreamed they were other than the unfilial acts of a man with a high temper which had never been controlled; for long after this he committed the care of his wife and of the property he settled upon her, to his son.

This conduct was to the last degree unfilial, nay, brutal is not too strong a word; but as committed by a person brought up as the testator was, they were the acts of a temper that had never been kept under control,—acting under the conviction that the money he demanded he had a right to receive. They were the acts in short, of just such a man as he is shown to have been, and had no reference whatever to the question of derangement. These things unhappily occur in this world too often. Sons are undutiful and unfilial. Sons raise their hands against their parents, alas, too often; but whoever heard—whoever dreamed, until now, of putting that to the score of a mental delusion, except in cases of acknowledged insanity. His father knew there was too much method in this madness, and never supposed for a moment that he was the subject for an asylum. But unfilial sons or brutal husbands,

however excitable and bad tempered, are not cut off from doing business or making wills. Why if that is so, where is the sane man? Nine tenths of us would have done the same if we had been brought up as the testator was, entirely unchecked in the gratification of our appetites, never having a hand held out to develope the good, and no voice raised to repress the bad. He was brought up to believe that money was the true God to worship. He had seen sacrifices to that altar daily in the house where he was born, and when for the purpose of getting possession of such an object of desire, he gives way to bursts of passion; to call that a mental delusion is trifling with the law, and trifling with all our experiences of human life. It might be well enough before a jury, but before a cool impartial tribunal engaged in deciding matters according to the very law, to take a burst of passion on the part of an ill regulated child who flies at the throat of his father, and says, "give me that \$200," and call that insanity; why, we all know that that is mere declamation, and nothing else.

I say, therefore, that we have the key of this man's character in the scenes of 1859. Doubtless earlier than that he was given to these bursts of temper, and under the influence of that temper he had done these things which we all shudder at—I know I do—and yet we know these things are all the time occurring in this world under similar circumstances, and that they have never been attributed by anybody to anything, but a bad nature badly developed.

It appears that the testator went to Europe three times. There he contracted habits entirely inconsistent with the habits of his former life, or those which he could expect to gratify in the same way at home. The last two years in Europe he had indulged in the luxuries of the cafés and restaurants of Paris. His appetite had been pampered. Ill health coming on, he returned to this country in November a year ago, to find that he was cut off from all possible means of continuing in the kind of life he had laid out for himself. He had supposed that with the means they had he could continue so far as his domestic arrangements were concerned in the same comforts and some of the luxuries he had been used to abroad; but from the time of his return up to the time of his death he found this thing impossible; and how impossible? That

brings us right to the vital point in this case, and it necessarily brings us to a discussion of certain of the characteristics and peculiarities of Mrs. Gates. We have already seen what his were; and now let us see for a moment whether with the views of living that he entertained and the views of economy that she entertained, with her admitted peculiarities, and the disparity of their ideas on that subject, it was not an absolutely necessary consequence that the particular kind of feeling that grew up should follow. It was no feeling of hatred on his part or anything like it. No greater injustice was ever done to his memory than such a charge—nothing ever destroyed his love for her—nothing ever broke down the respect he meant should be paid to her—but when the time came, and never, if your Honor please, until the time came when he broke down in health—when as he was told by his physician, good food, well cooked, was necessary to his recovery, never until that time did he even make a point that his mother should place herself in such a position that he should have about him a household of his own selection, and with which she should not interfere.

The point presented is precisely this: Mrs. Gates, on the stand, swears, that *she could never keep a servant in the house; that Carlton would send them out as fast as she brought them in.* That is her allegation, and that allegation is in keeping with a great many things which that lady states all through this case. Her testimony shows not, that stimulated by her interest, she has intended to misstate the truth, but it shows that her mind is so frail, that her temperament acted on, as it has been by forty years of this kind of wrangling with her husband, had gotten to that stage that she is not responsible for one-half she says or does. The most glaring inconsistencies were constantly falling from her lips. She was not wrong in saying that Carlton did not think her incapable of taking care of property in the sense that she could keep it, could hoard it, as dollars are put in a stocking and hid away—of her capacity in that way there was never any question; but that she had the mental capacity at any period of this time, to be a wise administrator of this estate, is shown not to have been the case beyond all manner of question. She says that their difficulties arose from the fact that she could not keep a ser-

vant in the house—that Carlton would drive them out as fast as she brought them in. Carlton returned home from Europe in November. He went through the Winter, became feeble toward the Spring, and on the first of March was taken ill, and that illness continued until the first of May. Doctor Upham was in attendance upon him from the first of March until the last day of April, and Mrs. Nesbit and her daughter left the house on the first of May, and from that time those two pass entirely out of this drama. They have no knowledge of anything that occurred after that time. And now we meet this question as to the household in issue between his mother and Carlton. To him, a well-ordered household was vital to his comfort, and when his health failed, was vital to his life. Until he was taken down by disease, the condition of his household was a thing that could be gotten along with however great the discomfort. We do not see anywhere an exhibition of anything more than petulance on his part on this subject, and then only when the discomforts he was subjected to, momentarily disturbed him up until the time he was taken sick.

We have already seen what his mother says on this subject, and now let us see how the fact really was; because the importance of this question, whether he was acting under the idea that she was breaking up the household, while in fact, he himself was doing so, is of the last consequence in arriving at a proper solution of this subject. Upon this subject the testimony of Cornelia Palmer, is very full and conclusive, for she gives a true picture of this household for pretty much the whole period of time between his first and second illness.

It is on page 328. From the time of his return from Europe, up to the time of his death, Miss Palmer was the only housekeeper in the house until Miss Salt came there in his last illness.

I need not say one word in behalf of Miss Palmer. If ever a woman faithfully carries out the duties of life as she finds them, it is Cornelia Palmer. Truthful, modest and upright, she combines stability of character, with the best virtues that adorn a woman, as we who have known her from her childhood, know perfectly well. She is supporting her-

self in positions like this, respected wherever she goes. Without reference to her position to the household where she lives, she is treated as an equal and friend. By good fortune Miss Cornelia Palmer was spoken of to Mrs. Gates for the position and place of a housekeeper. This is the first time we hear of any such office in the family. The fact that Mrs. Gates went to White Plains for the purpose of obtaining a housekeeper, proves that she had become convinced that it was futile to attempt to get along without having some responsible head to the family. Miss Palmer was induced to take the place. As your Honor will remember, from the time of his return in November, the household was composed for a portion of time of Mrs. Gates, Mrs. Nisbet and Miss Nisbet. This whole case shows that there was no cordiality of feeling between the Nisbets and himself, and they left in May. Miss Palmer continued there just as long as she could, and when she left she was compelled to leave or lose her self respect. No other servant would consent to remain there when she left, except an Irish boy who was his only attendant. Miss Palmer was a most unwilling witness, as all must have seen who heard her testify, and I was careful in my direct examination, not wishing to hurt her feelings by requiring her to tell things which I saw her sense of honor made her desirous to conceal. By far the most vital part of her testimony was gotten out on the cross-examination, that which points to the real truth of this particular issue. Miss Palmer pushed and pressed by the counsel for the contestants, unwillingly raised the curtain from that household. She never communicated to me the circumstances she related on her cross-examination. She shrunk from being a witness. I was compelled to call her and to put the few initial questions I did put to prove the fact, and the only fact that I supposed I could establish by her ; but these matters which throw a flood of light in the case were drawn out by the counsel on the other side. She says that she knew the testator, and was acting in the capacity of housekeeper at his house in Yonkers ; that she went there on the 19th of April last. Your Honor will remember that he was still ill at that time. He was not so that he could discharge his physician until the 1st of May ; she remained there until the 22d of June, so that she was there something over two months.

Among other things she testified as follows :

“ Q. And during all that interval you acted as housekeeper for Dr. Gates ?

A. I did.

Q. Was he at home during that period ?

A. Yes, sir.

Q. When you went there he was just recovering from a sickness—was he ?

A. Yes, sir.

Q. When you went there who composed his household—who was living in the house with him at that time ?

A. His aunt and cousin and one servant—one servant only.

Q. Mrs. Nisbet and Miss Nisbet ?

A. Yes, sir.

Q. Where was Mrs. Gates at that time ?

A. In the city.

Q. How long after that time did Mrs. Gates come to the house ?

A. In think in two weeks, as near as I can recollect.

Q. There was one servant you say, in that establishment ?

A. Yes, sir.

Q. She was acting as cook ?

A. Yes, sir.

Q. How long did they remain after Mrs. Gates, the mother, came to the house ?

A. Well, I think somewhere about ten days.

Q. Then she left ?

A. Then she left.

Q. What cause did she assign for leaving ?

A. She found it disagreeable, and did not wish to stay on Mrs. Gates' account.

Q. Did you try to induce her to remain ?

A. I did, but she would not remain as long as Mrs. Gates did.

Q. Was it stated to Dr. Gates ?

A. It was.

Q. Did he make any effort to induce her to remain ?

A. He did.”

Remember that Mrs. Gates had testified that she could not

keep servants because Carlton would drive them out of the house as fast as they came in.

Again she was asked :

“Q. How many servants, during that period of time, did you engage ?

A. I engaged four.

Q. You secured them from Intelligence Offices in New York ?

A. I did.

Q. How long did they remain ?

A. One of them remained two nights, the other one, and I retained two one month.

Q. Why did they leave ?

A. On account of Mrs. Gates ; on account of her not being agreeable to them.

Q. Did you try to induce them to stay ?

A. I did.

Q. And they refused to do so ?

A. They refused to do so.

Q. What was the interference on the part of Mrs. Gates which they found fault with ?

A. They said she interfered as regards their food ; they did not get enough to eat.

Q. And the four finally all left ?

A. Yes, sir.

Q. Was this the subject of conversation between yourself and Dr. Gates at any time—the effort to keep servants ?

A. It was.

Q. What did he say on that subject ?

A. He wished me to try and make the best effort I could to retain them.

Q. How long after you went there yourself, did you find it to your comfort, at least, to leave there ?

A. About two months.

Q. And why did you consent to remain there as long as you did ?

A. At the solicitation of Dr. Gates.

Q. What was it, Miss Palmer, that made it uncomfortable for you to remain there ?

A. Mrs. Gates made it very uncomfortable for me.

Q. State any of the conversations you had with the Doctor in the subject of your leaving—the reasons you gave why you could not get on?

A. I told him that his mother interfered so much and so constantly that it was impossible for me to keep servants, and that I could not remain there unless I could keep servants.

Q. What reply would he make to that?

A. He would wish me to try and make an effort to keep them, and did not wish his mother to interfere in any of the domestic matters.

Q. Did he speak of that as having for a long time interfered with his comfort?

A. He did.

Q. Did he say, however, that when she left home, that he was uncomfortable while she was away, because he was afraid that something might happen to her?

A. I never heard him make that remark; that he would be left alone without any one to do for him."

She understood when she made that answer, that I referred to him as being left alone.

"Q. Did he ever refer to the discomfort he had, fearing that something might happen to her while she was away?

A. He frequently spoke about that while she was away from home, and felt anxious about her; he did not like to have her away, fearing that something might happen to her.

Q. Did he ever say that he did not know how to account for her conduct at home?

A. He did; frequently he spoke of it.

Q. You left finally, you say, in the early part of June?

A. Yes, sir; on the 22d of June.

Q. In consequence of what?

A. Of Mrs. Gates.

Q. Now, then, during all that time was the Doctor at home?

A. During all that time, except occasionally he would go to New York for the day.

Q. I mean to say that he did not make any visits away from home?

A. No, sir.

Q. Was there anything in his conduct or deportment, or in his remarks to you that indicated anything strange or unusual in his conduct of mind?

A. No, sir, not in the least.

Now if your Honor please the contestant's whole case is based upon the assumption that the testator entertained a hatred for his mother so deep as to amount to an insane delusion, and at that very time he was telling Cornelia Palmer that he did not like to have his mother go away from home fearing that something would happen to her, that there was something strange about her, and he felt uncomfortable by reason of it, and expressed his deep anxiety on that subject. Here is a witness entirely impartial, telling the simple truth, as she saw it, and engaged in establishing or defeating this will but wanting free of all prejudice, unimpeached and unimpeachable, telling you that in all that time there was nothing strange, weird or unusual in the testator's conduct.

Again, she says:

Q. In the remarks which he made to you about his mother, was there anything that was not to be accounted for by the conduct of his mother in regard to the servants and the household?

A. No, sir; not in the least.

Q. Was your suspicion at any time excited by anything he said or did that he was not perfectly regular and right in his mind?

A. No, sir; never at any time; *I never thought of it.*"

Here was an acute and watchful woman sitting daily at this man's table for two months, seeing him constantly; Mrs. Gates being there for six weeks of the time, and the Nisbets for over a fortnight, and yet not a word falling from the testator, nor an act done by him indicating the slightest unkindness towards his mother. What becomes then of this absurd and trumped up theory that the moment the name of his mother comes to the ear of the supposed monomaniac it brought on these bursts of passion and hatred. For two months Miss Palmer daily and hourly saw the testator; the

subject was frequently discussed, he expressing his anxiety for his mother when she was away from home ; and yet the acts of this man whilst laboring under the delirium of fever, or under the influence of liquor, are presented here to establish in your mind—what ? Not the picture of a sudden burst of passion ; not the ebullition of a violent temper, but such a feeling of absolute unreasonable hatred toward his mother that his mind in that respect was as unfitted for healthy action as the tenant of a madhouse.

Again, this witness says :

“ Q. How many servants did you leave in the house when you left ?

A. Not any, excepting a man servant.

Q. At the time you left ?

A. The servants left with me at the same time.

Q. They would not remain after you left ?

A. No, sir ; they would not remain.

Q. Did he bring you over to White Plains ?

A. He did.

Q. What man was this that was at the place at that time—was it an Irishman ?

A. It was an Irish boy.”

It is not that Mrs. Gates was intentionally unkind to her son—she was the last person under the sun who meant to be unkind to him, but the very modes and methods she took to express her kindness, were of a character calculated to irritate him, especially when he was feeble with disease. See how it is developed in this instance. The most desirable person who could be found to fill that place, Miss Palmer, is driven away from it. If there was in the world a person who could with reference to his state of health, organize a household, and put him in a condition where there was a chance of his recovery, it was Cornelia Palmer. He knew it, perfectly well. But he found that her case was but a repetition of the others. They all went, and when Miss Palmer left there was no one remaining to take care of him but this green Irish boy. Did Mrs. Gates mean anything unkind by this conduct ? Not at all ; but she could not help it. She could not see a servant eat enough food to satisfy her without its creating a

pang, for she was saving the bread for her son. It was a part of her nature—in the exhibition of what she intended for kindness towards her son, to do just those things that made his life utterly wretched. All this he seems to have borne with while in health, but when it arrived to a point where a well regulated household, and good food, well cooked, became a necessity to his life; then he insisted that as the only condition upon which that could be secured, to wit, his mother's absence from the house, should be complied with.

Contestants' counsel asked Miss Palmer on his examination :

“ Q. Did you ever learn that it was because he had a suspicion against his mother, that he had an antipathy against her, and would receive no person in the house that was brought there or recommended by her ?

A. I never did.

Q. You never discovered that ?

A. No, I never did.

\* \* \* \* \*

Q. How long did Carlton remain at home after you went there ?

A. He was there during the time I was there.

Q. The whole time ?

A. The whole time, excepting that he might go to the city in the morning, and would be back again in the afternoon.

Q. Did you ever see him under the influence of liquor ?

A. Never, but once

Q. When was that ?

A. I could not fix the time, he came from the city one afternoon—I think he was somewhat under the influence of liquor; that is the only time.”

I read that now, but it refers to another branch of the case which I shall allude to presently :

“ Q. Were you and Carlton and Mrs. Gates in the habit of eating your meals together ?

A. Yes, sir.

Q. What was Carlton's treatment toward his mother ?

A. I never saw anything but kind treatment.

Q. What was his language toward her?

A. Well, at times, when he would be angry, it was like every one's language that is angry."

And here we have a key to a great deal of the testimony in this case. All these statements relating to his throwing coffee into the slop-bowl, and throwing coffee and water over his mother, exaggerated as they have been, are easily understood in the light of this testimony. Angry words at table, yet nothing to indicate to Miss Palmer, while present, that there was anything strange in his conduct considering the man as he was. His appetite was capricious and feeble. Coming to the table and finding his coffee already poured out and cold, he would throw it into the slop-bowl, and very likely without being very careful whether it all went into the slop bowl; when Dr. Gates mentioned this as one of the reasons he thought him insane, he expressly stated that the coffee was already poured out and was standing in his cup when he came into the room. He had been used to a very different thing, and that his mother should not wait till he came to the table before making his coffee, annoyed him. We may say this was very foolish, and that he should have put up with these annoyances; but that he did not, is no evidence of his insanity.

The counsel then asked :

"Q. Give us the language ?

A. I could not ; I could not give you the language ; I never took any note of it, or any notice of it.

Q. What was the character of it ?

A. It was the character of the language of any person who is angry.

Q. Was it profane ?

A. At times I have heard him use profane language.

Q. Toward his mother ?

A. Yes, sir.

Q. Was it abusive ?

A. No, sir ; not very abusive, I never heard him.

Q. What was the subject of his complaint ?

A. Well, there were various complaints ; it was mostly on account of her interference with domestic affairs—disarranging his comforts.

Q. In what way?

A. Well, in many ways.

Q. What is the way?

A. One was in winter in the city one day, and she moved his room—moved his furniture and things out of his room, without his knowledge or consent, and he came home and found himself in a room without any carpets and in great disorder."

Mrs. Gibbs in doing that thought she was doing a kind act toward the testator and yet it was of all others a thing most calculated to annoy him. He had then arrived at forty odd years of age. He had the fixed habits of a bachelor. His things had their particular places, and he did not want them disturbed. He goes to the city in the morning, and on his return home at night he finds that without consulting him, this lady for the mere sake of having something to do to satisfy her restless, uneasy, peculiar disposition, changed all his personal appliances and put them in another room in which he did not want them put. Now nobody ascribes this to any bad intention on her part. No doubt she thought she was doing better for him to change his room, but it was an act calculated to annoy him and to excite his temper, and yet we have heard it argued for hours that his conduct on these occasions was of itself proof of insanity; that the fact that he should be angry and displeased because his mother without any request from him, and without any desire on his part, but against his wishes, had turned out all his things from one room into another, was evidence of insane delusion. Can anything be more absurd? Admit that she thought that it would gratify him. If she was capable of any reflection, she knew it would not; but whether it would or not she could not be easy. This restless desire for change was always upon her. She must be engaged in something all the time, and that something was calculated to wear upon the testator, who was a bundle of nerves, like the grating of a saw. Such things unhappily occur in many families, but it is the first time that it was ever dreamed of to attribute these expressions of annoyance and bad temper to an insane delusion.

"Q. I ask you," says the counsel, "which was the most desirable and comfortable room?"

A. That was for him to say." She answers :

"Q. I ask you which was the most desirable and comfortable room ?

A. Perhaps if the large room was arranged and in order, it would have been the most comfortable room.

Q. Was not the object of moving this furniture into this room to make it comfortable ?

A. *There was no furniture in it, excepting the bed.*

Q. Was not the necessary furniture put in it ?

A. No, sir ; there was not the necessary furniture put in it ; there was a bare floor.

Q. Was not the carpet put down ?

A. Not at any time while I was there.

Q. Did she not assign as a reason for transferring him to that room, that it would be more comfortable and agreeable to him ?

A. She thought it would be more comfortable and agreeable, but she did not say it would be to him.

Q. Do you not know that that was the room he afterwards occupied ?

A. I do not.

Q. Do you not know that was the room he occupied during his last sickness ?

A. I understood that he occupied a north room during his last sickness.

Q. What else did she do to interfere with his comfort ?

A. She had his library cleared, and it was all ready to put the carpet down, and she came in and forbid putting the carpet down ; consequently when he came home the room was in disorder, when it need not have been in disorder.

Q. What was the object of having the carpet taken up ?

A. To have the room cleaned.

Q. Who did that ?

A. Myself and one servant.

Q. Under whose direction ?

A. My direction.

Q. Why did she not wish the carpet put down ?

A. I cannot say what her reason was.

Q. Did she forbid its being put down at all, or did she only say that it should not be put down that night ?

A. She forbid its being put down that night ; I don't know whether she intended that it should go down or not.

Q. When did it go down ?

A. The next day."

Now, sir, those are small things, but they are just exactly those small things which were calculated to excite such a man as that. I do not mean to say that it was filial conduct on his part. I do not mean to say that he should not have borne with this poor weak woman. On the contrary, I say, he was regardless of his duty, as a good son, in many respects ; but we are not discussing questions of ethics here ; we are discussing this question, whether that bad tempered son has been shown to have been an insane man. That is the question. Not whether his moral nature had been perverted ; not whether he was guilty of unfilial conduct, as Doctor Brown states it, but whether they have shown by these acts anything from which a tribunal of this kind can infer that his condition of mind was such as to render him incompetent to transact business.

Now, further on :

"Q. Can you tell us one thing more ?

A. I know there was a difficulty one day relative to the fire ; she accused them (the servants) of not turning the fire out, and they positively said they did turn it out, and she told them they lied—that there was no use of saying that ; of course these things created a great deal of trouble.

Q. Did she use the word 'lie ?'

A. She did.

Q. You heard it ?

A. I did.

Q. What did the servants say ?

A. They said that they had turned the fire out.

Q. Where was that fire ?

A. In the kitchen."

This, the Counsel persisted in drawing from the witness when questioning her about the difficulties with the servants. And why did Mrs. Gates act in this way ? Doubtless the turning out of this fire was an economical thing ; it was a part of her

management under which, as the other witnesses stated, they could not get enough to eat. That is all she meant by it. She meant that they should use every economy in that house, and we all know what the result must have been. Housekeepers have in these days found that the most adroit and liberal management fails to retain servants. Can it be wondered at then, that this lady with her peculiar disposition—which led her to interfere constantly with the servants—should cause this incessant change, which made Carlton's life in the condition he then was to the last degree uncomfortable. Now, your Honor, will remember that in this connection, counsel asked Miss Palmer :

“Q. Did you ever see Carlton use any violence toward his mother?

A. No, sir, never.

Q. Did you ever hear him order her to leave the table while she was taking her meals?

A. No, sir.

Q. What was Mrs. Gates' conduct and treatment toward Carlton?

A. Well, she was usually very annoying to him, as I have stated to you.

\* \* \* \* \*

Q. Who waited upon the table at the meals?

A. The servant, when they had one.

Q. Who sat at the head of the table?

A. Mrs. Gates.

Q. Did she ever fail to make it pleasant and agreeable for Carlton at the table?

A. Not that I know of.

Q. Or yourself?

A. Yes, sir.

Q. What did she do to make it disagreeable to you?

A. She found fault with a great many things, and said a great many things that were very disagreeable.

Q. At the table?

A. At the table.

Q. What did she say?

A. I cannot say particularly when ; I wish you would not ask me.

- Q. Mention the thing she said?
- A. Indeed, sir.
- Q. Your feeling toward Mrs. Gates is not very kindly, is it?
- A. Little or. Disagreement feeling toward Mrs. Gates, at times, sir.
- Q. Did you think she mistreated you?
- A. I am sure she mistreated me at times, sir.

Then speaking about hiring the servants:

- Q. Were you under her control or directions, or was she under yours?
- A. I was not under her control, or was she under mine.
- Q. Did he obeyed no orders or suggestions from her as to household matters.
- A. I often spoke to her about things myself.
- Q. Did you usually consult with her to see what her views were, or did you consult with her to act in accordance with her wishes?
- A. I tried to do so, sir.
- Q. How many servants were there during this time?
- A. There were five, I think, during the time I was there."

He then put the question:

- Q. She was to be over-looked and ignored?
- A. No, sir; he wished her to be treated with the greatest respect, and to have the servants to attend to her personal wants; but he did not wish her to interfere in the domestic affairs.
- Q. And he directed you to pay no regard to her orders?
- A. I have said nothing of the kind.
- Q. In household matters?
- A. Yes, sir.
- Q. Did you not think it strange that Carlton should make such orders in the house of his mother?

MR. LYON, she has not said that he made any such orders.

- Q. I understood you to say that Carlton told you not to obey his mother's orders in regard to household affairs?
- A. No, sir; I said that he wished to have the servants at-

tend to all her personal wants in every way ; but that he did not wish her to interfere in domestic matters."

Then he asked Miss Palmer this question :

"Q. I ask you whether, in your judgment, *she was incapable of conducting a household?*"

And the witness answered : "A. I think she was.

Q. In what respect?

A. In respect to her being old and feeble."

Counsel afterwards put this question :

"Q. Was not Carlton in the habit of helping you at the table before his mother?

A. No, sir.

Q. Do you not know that that was one of her complaints?

A. I do not know anything about them.

Q. Did that not occur in the presence of Mrs. Darling on one occasion ; did she not complain?

A. I do not know, sir ; I have never thought of it."

Now, Mrs. Gates testified not only that she could not keep servants in the house because Carlton drove them off, but that in her presence *he would sit down to the table, and help the housekeeper first before helping her*, and that sometimes he would go through a whole meal without giving her anything to eat. She, no doubt, thinks this was so. She would not have said it if she did not think it was so ; but there is not the slightest foundation for it. The only housekeeper there during the period referred to by Mrs. Gates was Cornelia Palmer, and she denies it ; and yet after this, Mrs. Gates was permitted to come back to the stand and reiterate the statement, that he would help Miss Palmer before helping her at the table ; and that he would sit at the table in the presence of the housekeeper without offering her (Mrs. Gates) anything to eat during a whole meal. As pure a figment of her fancy as ever entered the brain of an inmate of an asylum, and yet she believes it as firmly as anything she has stated here.

I have taken up the testimony of Miss Palmer in this order for the purpose of meeting the question at the outset, whether

Catharine Gates or his mother were responsible for the constant breaking up of the domestic arrangements of that house. Mrs. Gates is only sure that he did it. He admitted that she did it. If she did it, his influence is demonstrated. If she did every person that came feeling that it was a broken home, she is the ground. Hence the fact that some of the most serious sequences in the truly determined and true state of the case we have the testimony of an individual witness who was intimate of the house during nearly the whole period between his first and second illness, and during that time saw and every servant who had presented were known to him. It was by Mrs. Gates and not by Catharine. Catharine is the only one who has alone the testimony of Mrs. Gates. No other witness has been produced to say that a servant ever left the house by reason of anything ever said or done by the testimony, except Esther White, who testified that the servant who came into his room, was frightened and went away. Esther White was there only while he was under Dr. Updham's care, so that this occurred while he was under the influence of fever and stimulants. Mrs. Gates' statement stands therefore unsupported. They have produced none of these servants, and we could not find them although we made diligent search after them. The best thing we could do was to bring a clerk from one of the Intelligence Offices to show how large a number of servants had been sent to the house from one office within a few months, and he shows that nine went there in that time. Now, sir, if Mrs. Gates' testimony on this subject is not true, while it does not prove that she intended to say anything that was false or improper, yet it does prove that she sees everything affecting this case through a distorted medium. The very fact that she believes it to be true, shows how utterly unreliable her testimony is upon all matters bearing upon her interest in the result of this controversy.

Well then, I have upon this point established this cardinal fact, that Mrs. Gates' peculiar disposition and habit of interference with the servants was such, that even so well regulated a person as Cornelia Palmer, who desired a good place, who needed a good place, and who would have had a good place in that house had it not been for the conduct of Mrs. Gates—could not stand it, or any of the servants under

her. What housekeeper or servant could remain in that house if Cornelia Palmer could not. How could the testator keep any one but a green Irish servant to take care of him, if such a woman as Cornelia Palmer could not stand the constant, daily little irritations which this kind of conduct inflicted upon her and every person in the house.

Now then, if your Honor please, if I have established this point that the difference between them—the only difference he ever pretended to anybody as a justification and a reason why during the time he was sick, he wished her to go away from the house—if I have established that pivotal point that her conduct was such that he could not have her there, and at the same time keep up a household, which was then necessary to his recovery, I have shown the just ground—the natural, reasonable ground for everything he did or said at any moment that he was responsible for what he did or said, and the basis for his conduct even when he was delirious. This man was forty odd years of age ; his life of course, had not been a life of isolation. He had transacted business in the City of New York and elsewhere ; his agents there were open to examination, if there ever had been seen by them any sign of insanity. If in the course of his life he had ever shown a want of purpose, a want of will, or of capacity, his business relations of the last twenty years of his life were open to their examination. In all that wide field not a solitary witness is introduced, no one who did business with him ; no one who ever had any social intercourse with him is called by the contestants to testify as to the character or quality of his mind. But who have been called to break down this last well considered act of his. Who are they? Amos W. Gates, the father ; Mrs. Martha Gates, the mother ; Mrs. Nisbet, his aunt ; Miss Nisbet, the cousin ; Mrs. Beebe, who saw him once at dinner, and who immediately after his death, transferred her lodging to the mansion-house, and the two servant girls who were with him during the time of his illness and at no other time. We have listened for five hours this morning to an argument, with quotations from elementary medical writers, showing the character of mental delusion, and the whole testimony which is to establish the mental delusion of a man who had mixed with the world, and had business and social relations with

it, is the testimony of the persons into whose pockets the residuum goes if they are successful. I think the counsel entirely mistook the case when he said that it was to be called one of the celebrated causes of the world unless it is to be celebrated as an effort in a Court of Justice governed by principles of law to reach a decision by an appeal to the feelings of the Court, and by the argument that the last declining years of these old people can only be comforted by giving them the property in dispute. I think that the only point of celebrity there will ever be in it is that a member of the legal profession should have brought before a Court of law a case involving these questions, and rested it entirely for its facts upon the statements of the parties who were interested in the result. I do not say that the statements made by these witnesses have no foundation in truth, but I do say that while in some instances they are wholly untrue, in others they have been greatly exaggerated, by the natural stimulus of interest. Now then, what does even this evidence amount to when we come to sift it? The testator's life in reference to this case must be divided into two periods. During his residence in Europe he had unquestionably been indulging in a course of life not healthful, either to his moral or physical nature. He was failing in his health when he returned, that is very clear. Dr. Gates says that he was tuberculous, and had been for years; yet he wrote a letter last November to Dr. Hulbert, saying that there was no such thing about him; that Dr. Wood and Dr. Clark had said that he was tuberculous, but they were mistaken, and that Carlton had paid them \$150, when he was trying to arouse his mother's sympathy, and to induce her to furnish him money to go back to Europe. But the event proved they were right; and now he says the same thing. When Carlton returned in November he wished to establish his household somewhat in the way he had lived abroad, and he lived with his mother during the Winter till that hope was extinguished by a constant change of servants. On the first of March he was taken ill, and did not recover until the first of May. He was convalescing on the nineteenth of April, when Miss Palmer went there. To show what his condition was, refer to Dr. Upham's testimony, page 127 :

"I found him at that time, March 1st, a good deal excited, with a good deal of nervousness and restlessness, throwing himself about from one side to the other of the bed; he had a good deal of fever, a good deal of headache, and he had a severe pain over the region of the lung, which upon examination I found giving unmistakeable evidence of inflammation."

Dr. Upham states that at that time while he was in that condition he, Carlton, told him about this condition of his family. Dr. Upham told him that it was necessary for him to have *good food, well cooked*; and the testator stated that in the condition of the household he could not procure it. Now your Honor will perceive, at once, that with that fact operating upon his mind—operating when he was ill—that feeling would become stronger, and be more strongly expressed, particularly in a man whose form of expression was always exaggerated\*. He expressed himself strongly to Dr. Upham to the effect that he should never get well while his mother was there interfering with the household. Dr. Upham did not believe it because he thought the statement of facts was untrue; that, indeed, there was no foundation for his opinion. He knew that his mother meant to be kind to him in her way of being kind, but he did not know how all these purposes of his mother, in fact, produced results calculated to annoy and excite him, and to make his life unhappy and miserable. Your Honor will remember that Esther White came there at this time. She testifies that she came there on the 4th of March, and remained there until the last of April; and Doctor Upham testifies that during that time he was giving him stimulants as the proper treatment for a disease which was showing typhoid symptoms. He prescribed these stimulants so that his strength should not run down. He recommended

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\* A striking instance of this mode of expressing himself is in the remark he made to Mr. Romer while drinking tepid water to allay the uncomfortable sensations in his stomach, when he said "that the coats of his stomach were falling off."

A guest of a well known inn-keeper at Albany called his attention to a person at the table who was eating voraciously. "Eat," said he, "he will eat as much as a mule will draw down hill on the ice."

No one ever supposed old Cruttenden was crazy; and yet this expression was more exaggerated than any the testator ever used.

brandy with milk, and then Carlton asked for champagne, which was given him; and he says he found on two or three visits that he gave unmistakeable evidences of having drank to excess. And during the height of the disease, to wit, on the 25th of March, he wrote the letter to his mother, which the counsel has like this read as showing the natural condition of his mind. Is it not trifling with a case to read the letters of a man written while ill with fever, and drinking stimulants to excess as a remedy, as evidence of the condition of a mind in its natural state.

Even Esther White admits he kept brandy and champagne by his bedside; and Dr. Upham says that he discovered it on his breath. It was during that period of time that every circumstance testified to by Esther White, Mrs. Nisbet and Mrs. Gates occurred, which had any character of violence about them, as for instance the occasion when he jumped out of bed and took Mrs. Gates by the throat. Your Honor will find that that occurred during this time, and in brief, a careful examination of the testimony shows that from the time of the testator's return in November up to the first day of March, when Dr. Upham was called in to see him, there was no act on his part showing any unkind feeling toward his mother except in the two instances to which I shall refer presently. Every violent act of his has been shown to have occurred when he was acting under the effects of disease or of liquor, and when, of course, he was not responsible for what he did. There were two occasions when it was impossible to hold these witnesses to the point of time. The first was spoken of by Mrs. Nisbet, Miss Nisbet and Mrs. Gates, when they say that he threw a knife at Mrs. Gates one day at the table. Upon thoroughly sifting the story it amounted to this, that he threw a knife on the table in the direction of his mother, and it broke a glass. Without searching for any special exciting cause for this act, in having drank more wine than usual or otherwise, I take it for granted that it was one of those things which unhappily were not unusual at that table, and in a spirit of petulance he threw down his knife on the table with such force that it struck a glass and knocked it off on the floor. That is all there is of it. Perhaps the best illustration of this extravagant exaggeration

of little things is given in Miss Nisbet's testimony in reference to the other circumstance. It is supposed to have occurred before the first day of March. She was asked by the counsel whether she noticed any change in Carlton's conduct after his return from Europe, and she said there was a great change :

"Q. Describe it fully, if you please ?

A. Well, he talked and acted strangely ; I saw him throw a knife across the table at his mother on one occasion—the dinner table ; on another occasion, I saw him take a knife *and thrust it into her side ; it just touched her dress.*"

I asked her to describe the action—how far the knife entered, and what the consequences were—and she answered :

"A. He just touched her dress at the side—that is all ; and she left the room immediately, nothing was said,

Q. He did thrust the knife into her person ?

A. Yes, sir.

Q. How far did it enter ?

A. It just touched her dress.

Q. Was this at the dinner table ?

A. Yes, sir.

Q. What time in the Winter was it ?

A. Sometime from January to the first of March.

Q. Nothing had taken place before in the way of conversation around ?

A. We were very quiet, indeed.

Q. And there was no conversation at the dinner that day ?

A. No, sir.

Q. Of either a pleasant or aggravating character ?

A. Nothing at all, as I remember.

Q. Where was his mother sitting—at the head of the table ?

A. She had finished her dinner, and had got up to get a glass of water, the water was close by her.

Q. And he took the knife and put it out towards her dress ?

A. Yes."

I do not make any impeachment of this lady's intention to tell the truth—but one sees at a glance what a mountain is made of a mole hill. On her direct examination, we have

the dramatic scene of this madman thrusting a knife into his mother's side : but when it is inquired into, it resolves itself into this—that as his mother is passing him at the table, the knife which he has in his hand touches her dress. We can see at once by comparing the two statements how entirely the facts are changed when seen by interested or disinterested eyes.

Now these two things, the throwing of the knife, and the thrusting of the knife, occurred in the evening at the dinner table, and they do not remember whether or not, he had been to the city on the days on which they occurred—and this brings me to some remarks upon the subject of his habits, as to the use of stimulants.

I think it is quite apparent, that while in Europe on his last visit, he had used stimulants more liberally than he had done before. A little liquor would effect him very much,—that is clear. On his return he used wine on his table. Mrs. Gates says that at dinner he would ask her to take a glass of wine, he would drink wine himself, and of course with a temperament like his, and a body enfeebled by disease, a very little would excite him. Suppose a man, who for forty years of his life had never been thought to be insane, or to have acted under an insane impulse, should be sitting at table at a late dinner with his mother, suppose the man to be of irritable temper and in feeble health, and that something about his dinner should displease him, and he should throw down his knife to the other end of a table, large enough to accommodate four persons, in the direction of the place where his mother was sitting—striking a glass and knocking it off, and suppose also, the other fact of his putting out his knife and touching her dress as his mother passed him at the table—would those two acts be taken by any one, not himself insane, to prove insanity ; or, that he was laboring under an insane delusion,—and yet that is all there is of this case, up to the time of his sickness. Would not your Honor have to look for some other explanation of these acts, than to adopt the conclusion, that the man who had never been suspected of insanity, was insane. Take the cases quoted this morning. They are entirely different from this in all aspects. In each and every of them, it was shown by a series of con-

tinued acts, while the patient was not suffering under any disease of itself causing a mental disturbance, or under the effects of stimulants, that he conceived a delusion as to other persons, *without any ground whatever for the feeling.*

Here, if human testimony has any weight, he had the most substantial ground for all the statements he made or a feeling which he exhibited when not under the influence of disease. I beg your Honor's attention to the point in all those authorities, that a clear delusion without any foundation in fact, must be shown to exist before any impeachment of the mind can be claimed.

In the long case cited in Dr. Hammond's Report, in speaking of the sister of the patient, the author puts this point in the strongest light, where he says : "*had she really been guilty of the conduct toward him of which he accused her, his aversion would have been perfectly natural.*"

The accusation, the testator in that case made was, that his mother in breaking up his household, made his life miserable. If there was any delusion about this, we must ignore the only reliable testimony on that subject in the case. It was during his first sickness that the testimony of Dr. UPHAM refers to, and he says distinctly, that if the statements he made to him were true, his opinion as to the delusion falls to the ground, that such opinion was based upon the idea that these statements were false. And yet even these were made while he was ill and in bed, tossing about with fever. To return to the point of his using stimulants. Dr. UPHAM also says :

"Q. In what form did he take them ?

A. He took brandy with milk.

Q. Did he take other things besides brandy that were stimulating ?

A. He expressed a wish at one time to take champagne, and I allowed him to take champagne in small quantities.

Q. From the symptoms exhibited, had you any reason to suppose that he took both these stimulants to perhaps a greater extent than you had intended ?

A. I did suspect at times that he took them to excess.

Q. May not your opinion on that subject have been based upon the fact, that stimulants had a quicker or greater effect

upon him than you had supposed—is there not a great difference in people as to the immediate effect of stimulants?

A. The susceptibility differs in different persons."

I then asked him in reference to the occasion on which Carlton sent for him, when he found him seated at the table, on which there were several bottles, as follows:

"Q. What was his condition as regards the effect of liquor at that time?

A. *He was intoxicated.*"

And yet this whole scene had been introduced at great length as one of the facts to prove the testator insane. It was an unfortunate piece of evidence for the contestants, for it shows with great distinctness the peculiar effect which liquor had upon the testator, that it made him violent and over-bearing, and is of itself sufficient to account for all his irregular conduct in the case.

I suppose that a violent act committed by a man when drunk is not to be considered as evidence of insanity. It is an unsafe and unwise business for people to get drunk, as it is a dreadful business for a son to be guilty of an act of violence toward his father or mother; but unfortunately for our frail race—men otherwise, good and generous, "put an enemy to their mouth to steal away their brains;" but it has never been claimed that anything done under the influence of this excitement is evidence of insanity.

We find from Doctor Upham's testimony that on this occasion, in May, the testator, while alone and without the temptation of companionship, had drank himself tipsy. How often he did this we have no means of knowing. At any rate, he did it on that occasion. Unless the habit of drink has made very considerable inroad upon a man, I undertake to say that the case is very rare, if it ever does occur, that he will sit down and deliberately drink himself tipsy in his own house. The genial flow of spirits which arises from companionship may sometimes betray a man into too free an indulgence, but when for the mere love of the stimulant he drinks himself into a condition of intoxication, as in this case, the habit has certainly got something of control over him. Besides, as has

been proved in this case, a very little liquor excited him. What is the testimony of Doctor Wood on this subject. He had known the testator for twenty years. Carlton had been his student. He had watched the development of his character and understood him thoroughly ; and although Doctor Wood does not profess to be an expert on the subject of insanity in the sense known in his profession, yet he is so in the legal sense, and has, of course, seen a great deal of it in his practice. He says that he never suspected that there was anything wrong about the testator's mind ; and twenty years of an intimacy like this ought to have shown something wrong if it really existed.

I asked Doctor Wood :

" Q. In the last few months of his life did you discover any change in his habits in regard to drinking or the use of alcoholic liquors ?

A. I do not think Dr. Gates was an intemperate man ; he was of feeble frame ; he had a disease that was progressing to destroy him, and a very small quantity of wine or alcoholic drink affected him badly ; I think the last time I saw him at my office, which was on the seventh of August, he had been drinking something, and I reckon it was the occasion that was referred to about his taking some brandy and water at the Hoffman House ; he was very feeble, and he did take liquor occasionally—there is no doubt about that—but I did not think he was a drinking man.

Q. But liquor did, when he did take it, affect him ?

A. Yes, sir.

Q. In consequence of his condition ?

A. Yes, sir ; it affected him badly, and very little would produce an effect upon him."

Dr. ARNOLD says :

" Q. Did you ever have any conversation with him in reference to the effect of liquor upon him at any time ?

A. Well, I never conversed with him on that subject ; but on one occasion in speaking to me he told me that he had taken a glass of brandy and water, and that it had affected him very powerfully ; I should judge that he was a man who

could not drink much liquor without being immediately affected by it ; he was sensitive, nervous.

Q. Did he say where he took the brandy and water ?

A. I think he said it was at the Hoffman House.

Q. How did he describe the effect upon him ?

A. He said that he hardly knew what he was about ; he said that at the time he was in a state of nervous and mental suffering, and that he thought a drink would make him feel better, and that he went into the bar-room of the Hoffman House and called for a glass of brandy and water, which he drank, which affected him immediately, so that he hardly knew what he was about."

If your Honor please, here is a perfect key to all that was irregular in the testator's conduct. Suffering in mind and body, he takes a glass of brandy and water. Affected by the liquor, feeling moody and uncomfortable, and seeing something at the table, or elsewhere, which annoys him, in a petulant fit he shows his temper as upon the occasions spoken of. Is this evidence of insanity ? Well, if we go so far as that, I fear there will be but few of us who will be considered to be in a sound condition of mind. I am afraid that there are a great many men who stand very well before the world who at times give way to gusts of passion in their households, in which scenes a great deal worse than anything described in this record occur, no doubt followed by contrition and sorrow, and which uncomplaining women and children forgive and keep to themselves.

And while I am upon this subject I will refer to another occasion which is spoken of when the testator made an attack upon his father. That was detailed by Mrs. Nisbet with all its attendant circumstances ; and she left the stand without disclosing the fact in any way that he was intoxicated. When Mrs. Nisbet told this story of his threat to shoot his father it did seem that if there ever had been anything good in his nature he had lost it. He had a pistol with him at the time and it got out of his pocket. The counsel offered this occurrence also as proof of the testator's insanity. On another day when Mrs. Gates was upon the stand her attention was called to this occurrence, and she was asked whether she re-

membered it ; and she said, " Yes ; he came and knocked at the door ; he came up very furious ; that was the time he was *intoxicated* ;" and then we had the fact developed, for the first time, of the reason for his conduct on that occasion. When Miss Nisbet was upon the stand I asked her this question in reference to this scene :

" Q. This time that he came home that you speak of, that he inquired about his father, what was his condition ?

A. I think he was evidently under the influence of liquor—*slightly*."

Coming home drunk and threatening to shoot his father when he heard he was in the house, was her measure of being slightly under the influence of liquor. All these scenes have been grouped together and talked about to-day ; his threats to shoot his father and mother, seizing his mother by the throat, seizing her by the jaw and forcing a tooth out, throwing knives at her and stabbing her with knives, have been seriously put forth as occurring when he was in his natural state, and all the circumstances of intoxication and delirious fever have been as much ignored as if they were not in the case. In the same manner they were put into the hypothetical questions put to the witnesses. I cannot permit myself to fear that a case can be carried by such a mode of trying it. Now Mrs. Gates says that at the time he threatened to shoot his father he was intoxicated and furious, and Miss Nisbet admits that he was slightly under the influence of liquor, and they both say that that was the only time they ever saw him under such influence. Well, if he was so overcome by drink at that time that Mrs. Gates could not keep it back, although Mrs. Nisbet had concealed it all through her testimony, may he not have been on those other occasions testified to by them, under a less degree of intoxication so that they did not notice it at all. Dr. Gates himself has a very curious theory in the subject of his son's intemperance, and shows that he is human like the rest of us and of very frail memory. That his interest in that yellow metal which shines so brightly, and which we all love to have in our pockets, does sometimes affect his vision, is shown in this particular instance I think, if not in some others. I call your Honor's attention especially

to the Doctor's theory about his son in this regard. Of course it was early seen that this theory of Carlton being under the influence of liquor at the time of these outbursts, was a crushing one to their case. They saw that there was not an instance or an occasion giving the slightest idea of an erratic movement on the part of the testator when he was not ill, which could not be reasonably attributed to the influence of liquor. His conduct was just what a person excited by liquor would be apt to do, and therefore it was their point to ignore the idea that he was at all given to drink, and of course Dr. Gates took his turn at the wheel.

"Q. And during all the time of your being with him, you never saw him under the influence of liquor?"

A. I never saw him when I thought he was under the influence of liquor but that time."

"That time" was the occasion when according to the story of Mrs. Gates, Carlton was intoxicated and furious, hunting for his father, with a pistol to shoot him; and this is the description the Doctor gives of it to his own counsel:

"Q. On the occasions when he was walking up and down the piazza and muttering, did his conduct and his deportment then indicate that he was under the influence of liquor?"

A. Not at all, that is, it was quite different from what I knew when I believed him to be under the influence of liquor.

Q. How was it different—state the difference?

A. When I saw him under the influence of liquor, *he was not boisterous; he was talkative, and seemed rather silly—that was the tenor, or his asking a good many questions—unimportant ones.*"

Having a loaded pistol in his pocket, asking where his father was, and threatening to shoot him, is not boisterous, but talking silly and asking unimportant questions! I do not say that Doctor Gates has any deliberate intention to mistate the truth, but it only shows that when we are on the scent of that which we love better than anything else in the world, it destroys our judgment, and we remember to have

seen things which we have never seen, and forget things which took place under our very eyes. The first accounts we have of this scene are offered as most conclusive evidence that here was a raging madman, who ought to be confined in Bedlam—rushing up stairs furiously, threatening to kill his father, the pistol actually dropping from his pocket, and yet the Doctor, speaking of the same occasion, says: “That he was not “boisterous, he was talkative and seemed rather silly, that was “the tenor, his asking a good many questions, unimportant “ones.” But the Doctor’s answer served the purpose. It answered the question. He had seen him walking back and forth on the piazza muttering to himself. That indicated that there was something on his mind. It indicated anything but silliness, and therefore it would not do to attribute that to the influence of liquor—for the Doctor had only seen him in that condition once, and liquor made him silly. A drunken son, hunting his father with a loaded pistol to shoot him, may be the Doctor’s definition of the word “silly,” but it is not one that which the world generally gives to it.

Carlton was taken ill again in the early part of August, and never went out after that. From that time until the Monday of the week in which he made his will, he was excited and under the influence of fever; and it is of that time only, that the little girl, Elizabeth Murphy, speaks. She left on the Wednesday before, and from that day till he died, the only persons who ever saw the testator, who could gauge his intellect, and test his mind, were his attending physicians, the counsel who drew his will, and his friends who witnessed it. And in those minds, after the Monday not a suspicion, or doubt, as to the clearness and soundness of his mind was ever created.

At the end of April he recovered from his first sickness, or rather got better, and we have the months of May, June and July, when he was in his natural condition. In the latter part of July he went to Newport, and evidently drank a good deal. Cornelia Palmer was with him all this time to the 22d of June, and saw more of him than any other person. During all this time of daily intercourse she never suspected any difficulty about his mind, and from the day she left, until about the time of his return from Newport, when the fever

came upon him ; there is not a scintilla of evidence of insanity, or of insane delusion.

Is all this to be ignored, because when the fever did come upon him, he acted as everybody else does in the same circumstances? Is this will to be destroyed, because in the delirium of fever, he acted as all delirious patients act?

It was before the 9th of August too that he was drinking at times. Cornelia Palmer saw him once when he was under the influence of liquor, and it was after she left that the scene his mother speaks of, of putting the book on her head occurred ; and if it did occur, it must have been when he had been drinking, or after the fever had got possession of him.

I have, therefore, grouped together the evidence until we get down to this point of his last sickness ; and what occurred then? Dr. Arnold first, and then Dr. Wood saw him in the first week of his illness. They found him excited with disease—in a condition, to use their own language, in which he was not fit to make a will, and so advised Mr. Romer. Now this was his condition ; and this the period of time the contestants take to prove an insane delusion, and get Mrs. Gates to make this statement in proof of it.

“Now mother, look me straight in the eyes, I want you to go down to Dr. Wood ; I will shoot you now, if you don't go to New York and stay.” During that time, and up to the Monday before the Thursday on which the will was made, he was in exactly the condition to say and to do these things, and the intelligent physician in constant attendance explains it fully. He was laboring, as hundreds do, with that class of tuberculous disease, with a delirium which is the out-growth of the disease. True it is, that even before it entirely passes away and the patient returns to his natural state, there are lucid intervals in this disease ; times when, as we know, the patient is perfectly himself, perfectly competent to originate and to do business, but that is not his general condition, and he is at any time liable to wander off again. So that as we have always conceded in this case ; up to the Monday there were times after the 9th of August when he was entirely unfit to make a will, although there were doubtless other times before the 19th when his mind was perfectly clear. But all the evidence of the contestants comes to an end before the Monday

in question. It ends on the Wednesday when Mrs. Gates left the house herself; and on that day this little girl, Murphy, left, and from that time the whole evidence in this case, everything that is before your Honor is on the other side; the two women, Margaret and Ann Fitzpatrick, Dr. Arnold, Mr. Romer, Dr. Wood, and the three witnesses to the will. Was it not incumbent upon these contestants, if they had intended or expected to make a case that your Honor could listen to, to present some evidence of this mental delusion flowing out of well attested acts of this man, attested by disinterested parties, at a time when he was not under the delirium of fever? Was it not due to this case, if they had it? Of course they did not have it. None of the witnesses on which we rely have any interest in the subject except Dr. Wood. Dr. Arnold is not even a witness to the will, and has no pride of opinion to sustain. Was he not competent to judge of the testator? Is he not a clear-headed experienced physician? He tells you that on Monday morning he changed—the excitement and delirium passed off; that on Tuesday he was still better, and on Wednesday the improvement was still going on; that on Thursday, the day the testator made his will, and when he (Dr. Arnold) did not know that the will had been made, or was in contemplation of being made, he entirely agreed with Dr. Wood in the remark as they came down from a visit to the patient, that “his mind is as clear as a bell.” Where was the word of unkindness toward his mother for the last eight days of the testator’s life—where was the word or deed which shows that he had any unkind feeling toward her during that time.

On and after Monday, he was under no excitement of fever or stimulus; and he knew that she was in the house. When he desired her to leave the house, he was not responsible for his action—but in the condition he then was, he had good cause for making such a request—though it is clear he would not have made it, had he been well. And this feeling was so aggravated by the fever, that his doctors were compelled to advise Mr. Gates to go. Will any one say after reading this testimony that that was no foundation for this feeling on his part. Did not he have reason to believe, was he not justified by the facts in believing that she could not stay there, and he

be supplied with the necessary comforts and the proper food to enable him to get well? But this feeling found expression only through the influence of the disease. Afterwards when these symptoms had subsided, and when the fever moderated, and he heard that his mother was in the house, and knew that she was there he quietly acquiesced, for he had secured the attendance of a friend who he knew would see that his household would be kept together.

The testimony of Dr. Arnold puts an end to the attempt to prove that the testator was acting under a delusion, such a delusion as the law recognizes as an insane delusion, by reason of his hatred or dislike of his mother founded upon a state of facts having no existence except in his imagination. You will find in all cases that one of the chief features of such a delusion is that the expression of dislike breaks out whenever the object of it is presented to the mind of the maniac, or the name of the party is mentioned in his presence.

But what was the fact in respect of the testator? On the day he made this will when he had carefully looked over the whole subject, and came to a conclusion with regard to his mother, the wisdom of which no one who has been in attendance upon this trial, without any other knowledge of Mrs. Gates, will doubt, he remembered that among his assets he held a certificate for \$27,000 of the stock of the American Exchange Bank, of which twenty thousand belonged to his mother, and of which she had no evidence of title. What did he do on that subject? Did he show any evidence of delusion, or of the hatred toward his mother that has been so often repeated? So far from that the testator wearied, and ill as he was, made it a special point in his instructions to Mr. Romer, and directed him to *put the statement in writing*, and enclose it in the same envelope with his will, that this part of the stock belonged to his mother and must be transferred to her by his executors. Had he really entertained the unnatural feeling so often alluded to, would he not have concealed this fact, and thereby deprived his mother of this large sum of money? She had no evidence that the money belonged to her. Had he died and made no sign, she could not have recovered it. Did any one ever before hear of a crazy man—crazy with hatred of a particular person—taking so much

trouble to have an act of love and justice like this done on behalf of the person so hated? The mere statement of this very pregnant fact, shows how utterly preposterous is all this declamation about hatred of and insane delusion regarding his mother. Why, sir, no will was ever made shewing more deliberation than this. He had certain views of a fixed and determined character. So far as his mother was concerned he believed she had all the property she could use for her comfort, and that more, would be to impose new burthens upon a mind which he considered, and justly too—as very feeble. So far as his father was concerned, their relations had been such for years, that a provision in his favor would have been considered more strange than any provision in the will before you; and above all, he did not mean that his property should go to the Nisbets. Whatever was left to his mother, he knew very well would flow into that channel. Hence he first takes care that all of his mother's property in his hands shall be safely restored to her, and as to the residue, he held as he had the right to do, the fixed purpose that it should not go to the Nisbets. If there ever had been any association or feeling of kindness between him and the Nisbets; if he had ever regarded them with affection or respect it would have been proved before you, but not a particle of evidence to that effect is produced. And why? The parties litigating this will, and who expect to reap its fruits, were met at the outset with this declaration in the will which they knew they could not disprove. "There being a total estrangement, amounting to a complete non-intercourse between the Nisbet family and myself, I have not felt it to be incumbent upon me to *leave either of them any devise or bequest whatsoever.*" Here was an allegation they could have disproved, if untrue. If there ever had existed between these cousins anything even akin to friendship, anything which would seem to indicate that he ought to remember them—in other words, if they could have proved his statement in his will untrue, we may be very sure it would have been done.

Before leaving the part of the case relating to the condition of his mind, I desire to refer a moment to the testimony of Mrs. Beebee. He came home to a late dinner on that occasion. She says he was hoarse. I have no doubt he felt

ill—unhappy, and uncomfortable; I fancy he was not very well pleased to see that person at the table. She was not calculated to add much charm to the occasion. She was a stranger to him, and had no interest in the family. This, if true, occurred in July.—He was doubtless much annoyed about Miss Palmer leaving him, and the cause of it. The interest he took in her, is shown by his taking her home when she determined to go. He came home very likely something under the influence of liquor, and this was probably the first strange face he had seen at table. Ill, uncomfortable and excited, he indulged in his usual exaggerated form of speech. Assuming that we have his remark as he made it, one cannot help wondering that for the two months before Miss Palmer, seeing him every day, had never heard anything like it, but still she saw him once when he was intoxicated, and that was probably his partial condition on that day in question. Now, just at this point, and in this connection, I ask the Surrogate to read from page 171 of the case (fol. 676), from the testimony of Dr. Arnold—I will not stop to read it. In that he refers to a series of facts, all of which are proved in this case to be true, and yet Dr. Arnold supposed he had misstated them.

The case as it now stands, if I have made myself intelligible, shows that from the day the clouds that at times passed over the testator's mind, cleared off the Monday before the Thursday on which the will was made—from that day forth no person who saw him noticed anything in his conversation or conduct calculated to arouse a suspicion that he was not perfectly competent to make his will. Dr. Arnold says that Carlton during that period of time, after the delirium of fever had passed off, mentioned to him one day that he knew that his mother was in the house at that time—that he knew she came there. This is a significant fact in connection with the contestants' theory of this case—for if that theory be true, the knowledge on his part of her presence in the house after the delirium passed away, would have produced some manifestation of displeasure. Doctor Brown refers to it in his evidence, to show that this feeling toward his mother was only expressed when he was under the effects of disease, and when that passed off, and he returned to his natural condition, there was no evidence of any such feeling existing

and that this was the time to judge of the true condition of his mind. If that be true, and you find that the testator was laboring under an insane delusion, you must find it solely upon the evidence that he exhibited this insane delusion, when he was under the delirium created by disease. We now come to the testimony of Mr. Romer, a respectable lawyer of experience, and perfectly competent to judge of mental capacity.

Mr. Romer says that he was sent for through Mrs. Migy, some few days before he drew the will, and that when he got to the house the testator said to him : " Mr. Romer, I made a mistake, I thought I was going to die and I sent for you to draw my will—I feel better now; and the Doctor says I am better, and I will not call upon you." A day or two after he was sent for again, and had a conversation with Carlton on the subject of his will. I think the testimony shows that there were occasions subsequent to that time when his mind was excited, and that he had not arrived at that condition, where his physicians felt sure that all the excitement of the fever had passed away. On the two occasions when Mr. Romer saw him before the Monday, he seemed to be free from excitement, and on the last occasion he sent for his mother's will, read it over, marked a couple of passages, and handed it to Mr. Romer to read. Mr. Romer is certainly competent to judge of his then condition, and although he would not have drawn, or had him execute a will on that day, yet he says that he made up his mind at that interview, that he was in possession of his mind. He did not refer to his mother in any spirit of unkindness—nothing was then done. By reason of domestic affliction Mr. Romer was called away from Yonkers, and he did not return until Tuesday night following the Monday, when his mind had entirely recovered its tone. He made provision however, that in case the testator should desire to have his will executed during his absence, another gentleman in the profession should attend to the business and draw the will.

On Tuesday he was in Sing Sing, and he telegraphed Doctor Hulbert, to know if it was necessary for him to come down.

Doctor Hulbert answered the telegram, and told him to come.

I have no fear that from anything that has been proved in this case, it will be assumed that Dr. Hulbert did this, except at the testator's request. There is one thing that stands out clearly if anything does in this case—and that is, that there was no human being who could successfully interfere with the testator's views and plans on this subject. He had made up his mind to make the will he did make—and whether he was acting under an insane delusion, or in the clear possession of his faculties, there was no human power that could turn him from his purpose. Whatever the moving cause—so far as he was concerned—lawyer, priest, or layman, had no more influence over his purposes or his intentions, than the breath that stirs the morning air. Of all the absurd propositions that have been stated in this case, the most absurd is the idea that Dr. Hulbert, or any one else but Carlton Gates, engineered the execution of this will. He was hard and unyielding, for he was his father's son—he was conceited and dictatorial, because he was the spoiled child of a weak mother.

As before stated, Doctor Hulbert telegraphed Mr. Romer to come to Yonkers, and he came. He saw Dr. Hulbert on his arrival in the village, and then went to Doctor Gates' house where he had an interview with him alone, as all his interviews were; an interview which shows that there was but one man who was the mover in this business, and that that man brooked no interference in substance, or hardly in form; an interview which proves beyond all things that whatever else may be said in this case, the will was his will, and nobody else's will. He would not allow any change in his own structure of the will, least of all a change in what he considered the very foundation principle of it. The only question on which he would take advice was as to the necessary amount of money to be appropriated for the purpose of fully executing one of the provisions of his will; and this was paramount with him if it should take all he had. On Wednesday, Mr. Radford was called in, when the draft of the will was read over in his presence; the testator suggesting some alterations which he directed to have made. The engrossed will

was brought back and read to the testator. He hears it read from beginning to end, and discovers that one of his explicit directions had been omitted. When Mr. Romer ceased, he turned to him saying: "You have omitted an important clause of my will; I don't see how you dared assume the responsibility—I don't see how you dared to do it." Mr. Romer replied: "Doctor, I am accustomed to act as a professional adviser, and not merely as a clerk, and I have taken the responsibility of leaving out of your will what I considered unimportant." "Mr. Romer, it is not your will you are drawing; you are drawing my will. \* \* \* *I consider that the very basis of my will.*" Is this the language of a pliant machine in the hands of Dr. Hulbert?

Let us see whether there is any insane hatred toward anybody in this clause which he said was the very basis of his will: "My mother having already an ample income of her own to support her more than comfortably, and being moreover in such feeble, physical and mental condition as to render her incapable of taking proper care of her property, I have not thought it necessary or desirable to leave her any portion of my estate; and there being a total estrangement, amounting to a complete non-intercourse, between the Nisbet family and myself, I have not felt it to be incumbent upon me to leave to either of them any devise or bequest whatsoever." Remember that this was dictated by him in these very words. Do they express any feeling of hatred toward his mother? So far from it, if there was any one he loved it was his mother; but he fully believed, and I am very sure he was altogether right about it, that the very worst thing he could do for her substantial comfort and happiness would be to impose upon her the management and care of his property. So far as anything she could need in this world was concerned she had more of her own than she could spend, and she was the wife of a man of abundant wealth. We have heard to-day of his having abandoned to his wife and son all he had, and of his having gone out upon the world a homeless wanderer, with just enough to keep him from want, and we know how much weight to attach to such statements. Of course, Carlton knew what the means of his mother and father were, and therefore that clause in his will was strictly

and literally true. And now, sir, in this connection, the question may be considered whether there is anything in the paper itself which condemns it within any legal acceptance of the term of being an unnatural will. Unnatural? Why, sir, there is not an intelligent man or woman in the Town of Youkers who knew these parties, who would not have looked upon it as in the last degree surprising and strange if he had given his property to his father, or even to his mother, so long as she was under the influence of the Nisbets. His relations with his father were perfectly known. They had originated in the unhappy circumstances I have referred to. A feeling of hostility had grown up between them which had hardened and increased with years, so that they had taken different paths. The father elected to go away and leave behind him his wife and son. But it is for the purposes of this contest that the cause of his going is put upon the son. All the unfilial sons in the world would not have driven a man of the will of Amos W. Gates from his home if he had not much stronger reasons. Of course, he would have sent the son away and asserted his headship of his house. It was not cowardice which made him desert his home; it was simply that as long as he remained there he would have attached to his side a thorn which was stinging him every hour of his life. It is idle to make a new issue on this subject. It has been too long known. Still a mutual feeling of hostility existed, and the son would no more have left his property to the father than the father would to the son. So far back as 1864, the father had declared he had abandoned the idea of leaving anything to Carlton. (See Exhibit "B," page 514.)

So far as the mother is concerned, does not that clause in the will which I have read state the facts? Did he not insist always that she was in a condition of mind that rendered her incapable of looking after affairs of magnitude. These peculiarities of hers which made it impossible for her husband to live with her were not mere infirmities of temper—they went much deeper than that; and who can have known so much about them as her husband and son. They drove the former from his home, and destroyed all the usefulness as well as all the happiness of the latter.

When this lady was last upon the stand, coming back

under the excitement which had been caused by the evidence offered in support of this will, none of us could help observing that her appearance and manner were not those of person possessed of a clear and natural intellect. The stenographer tried to make a connected story at first, but he was requested to take it as she stated it; and anybody who reads it will see that it was the disjointed effort of a mind that has lost all power of continuity—mixing up interviews with Doctor Wood, which occurred years ago, with those of last Summer, and telling things which were the creations of her fancy—imagining things, in all seriousness, which never did occur, and presenting a condit on before this Court which the testator had often witnessed and perfectly understood. He knew that the imposition of the care of this property would but add to his mother's cares and troubles; and that it would sooner or later get into the hands of the Nisbets, a result which he was determined to prevent. That was the stand-point from which he viewed it. Well, then, who should he give it to? We come to that point now.

Has it not struck your Honor as somewhat singular that the contestants have given us no evidence of the testator's social life or associations for the last twenty years? That no one has been produced outside of his family, who were around him for all that time, to speak of his habits or friendships—if he had any—except Dr. Lee; and he tells you that he knew him well, but had not seen him during the last three years of his life; and strange to say he does not pretend from all he ever heard him say or knew of him, that he ever saw anything strange or unusual in his conduct, or ever suspected there was anything wrong in his mind. If Doctor Lee could have stated any circumstances which had occurred during his acquaintance with him, and which indicated any unsoundness of mind on the part of Carlton, does any one doubt but that he would have stated it? You have noticed the interest that gentleman manifests in the case. He has attended most of the meetings, and he is here to-day; and if there had been a single fact in all of his intercourse with the testator which he could have presented to impeach his sanity, as a matter of course he would have presented it. But having no fact to give, we are treated to an opinion from this venerable gentle-

man—an opinion not based upon his own knowledge of him, but upon what he heard the first five witnesses testify to. I refer now to his testimony before the contestants rested their case, and I declined to cross-examine him. If he had given us a few facts instead of going on the stand three times to give his theories, and finally submitting a written statement, which would make a good-sized book; if he had given us a few facts showing what the testator's habits and conduct were when he knew him, that would have been something we needed; but when he undertakes to say that acts that a drunken man might do, or acts that a man suffering under the delirium of fever might do, can be accounted for *in no other way* than upon the ground of insanity, I respectfully submit that such evidence can have no weight in this Court.

Is it not a peculiar feature of this case that with such a circle of acquaintance as the testator must have had, not a witness, except Dr. Lee, is introduced, outside of the members of his family, who knew anything about him before he went to Europe, and as to Dr. Lee, they avoid an examination as to that part of his life.

The picture which the contestants have exhibited to the world of their only child, covered the last eight months of his life; and its scenery is drawn from the occurrences of a sick chamber, with the occasional incident of a drunken debauch. For the forty preceding years the canvas is left untouched except by two incidents related by his father, when in a tumult of passion he appears to have used threats, and, to some extent, violence upon his father's person. Even if his parents should succeed in their appeal to your Honor's sympathies, will the little money they will get by reason of it compensate them for thus exhibiting their son in the colors they have painted him during these eight months, and leave the rest of his life a sealed book. I know how sweet is gold to some of us; but I do not believe that gold thus gotten will bring with it either joy or comfort. They know, and some day the fact will come home to them, that they have permitted their son to be held up as insane when he was not insane, and this for the sordid purpose of defeating his deliberate will. But at best he had but few friends, and the circle

for his testamentary bounty was very narrow. Under the circumstances developed by this case who are the persons it would have been most natural for him to remember in this will? The father? Nobody can dream for a moment that under any circumstances he would do more for him than the father proposed to do for Carlton. The mother? In very truth he believed and I believe that he did the very wisest thing he could for her by not increasing her cares with additional property. Whom then should he look to, isolated as he was? There was in the City of New York a lady with whom he had boarded during the time he was a student of medicine. She had been kind to him, and he recognized it. He said: "I will remember her; she is the wife of a clergyman, and poor, of course, as I believe most clergymen are; I will remember her." Doctor Wood had been his preceptor, and he had known and esteemed him for twenty years. He evidently did not put Dr. Lee in this category. From the time of his return from Europe to his death he had not seen Dr. Lee, and there was no reason why he should remember him. If he had, I am inclined to think we should have been spared his long dissertation on insanity. Doctor Wood, he had been with in more happy days, and if there was any one in the world who understood him it was Dr. Wood. How perfectly natural it was that he should give those things only to be valued by a person having some taste for art—to this old friend. Doctor Amos W. Gates tells you that it was an evidence of Carlton's insanity that he bought these things. Why, truly a man who could sacrifice one of these golden gods for a statue or a picture, must be insane! The idea that money, which he had been taught, was the one thing in the world to love and cherish, should be exchanged for those works of genius which sweeten our lives and elevate our natures, of course, is evidence of insanity. So thought the father; and the son knowing his views would not leave them to him, even in the absence of other reasons. To his mother, too, they were valueless; so he bequeathed them to the man he esteemed, and who would appreciate them.

And now we come to Doctor Hulbert, the other legatee. By the concession of all parties he had been the nearest approach to a friend that family ever had; and very sad it is to

say it, but it does seem to me that in the true acceptation of the term they never had a real friend. From the birth of this child they seem to have isolated themselves from each other and from the world, and you find that from that time forth they had no surroundings except those of interest. Doctor Hulbert seems to have, in his connexion with the family, more nearly answered to the relation of a friend than any one else. Doctor Gates even testifies that up to the time that Doctor Hulbert last visited Carlton at the house before his sickness, he had always considered him as a friend. Now, here is a paper dated January 9, 1864 ; it is in Doctor Gates' handwriting, and is produced by Dr. Hulbert :

"I, A. W. Gates, state as follows : " I shall leave \$3,000 per annum, secured to Mrs. Gates during her life.

"I have for sometime intended to leave a similar arrangement for Carlton, and for the benefit of his children, should he leave any, but have abandoned the idea for the present.

"I have no will, and circumstances may determine whether I may leave one or not. Whenever I may die, I wish to be decently and plainly buried at Yonkers, and would like Rev. Mr. Hulbert to be fully consulted regarding it, and also any inscription on the stone, which I wish to be plain and modest."

What a commentary is this upon a household whose own members have thrown it open to the eyes of the world ! With a wife and son to survive him, the husband and father commits these last offices to the hands of a stranger to his blood. Could he have had a better opinion of her ability to attend to a matter so simple as this, than his son had of her ability to take care of much more important matters ?

This paper illustrates the feeling which Dr. Gates entertained for Dr. Hulbert. He was to be the friend at the last moment. When all other things in this life fade away, he was to be called in. Carlton entertained the same feeling, and when he was taken sick a second time and found that the things which had occurred in his household in March were likely to be reenacted, he sent for Dr. Hulbert to come to him and stay with him all the time he could give, until he should get better. He stated to two or three persons, to both

his physicians, and to Mr. Romer, that he had sent for him for the purpose of taking care of him. Dr. Hulbert, leaving his family and returning to White Plains, only to attend to his parochial duties, obeyed the summons like a friend and christian gentleman, and was with him all the time it was in his power to give until he died. On Friday of that week, he went to White Plains as usual—nobody dreaming that Carlton was so near his end.

To-day the counsel for the man who made this written request to Dr. Hulbert, without the betrayal of any manly shame, charges, in the presence of his client, Dr. Hulbert with first having procured this will from Carlton, and then deterring him to die as he might, and this after the most emphatic statement made by Dr. Arnold upon his cross-examination, that on Friday he had no idea that he was in immediate danger of death.

Looking then over the ground that was in the testator's vision at the time, who was there so likely to become his legatee as Dr. Hulbert. He was a clergyman with a family, and I suppose of very moderate means. He had passed the meridian of life, and had not many years left in which to accumulate much for his old age if he should reach it, or to provide for his family after him. Carlton knew all this. As an abstract question of doing good with his money, he knew as your Honor knows, that it was a better, wiser and more beneficent disposition of this residue, than to give it to any of his kindred; and he did it as he had the right, and full disposing power to do—and who shall gainsay it. Certainly no tribunal governed by the wholesome rules of law will gainsay it.

But Carlton did it, and then all the barriers which enclose the decencies of life are thrown down. Carlton is exhibited in the delirium of his sick room in the frenzy of a debauch, and characterized as a maniac! Dr. Hulbert is unfrocked; all the recollections of twenty years of friendly intercourse and kindness are sacrificed without regard to a reputation that never had a stain upon it. Without regard to the sacred character of his calling; without regard to their knowledge of the stubborn character of Carlton's mind, which never brooked interference or dictation from any one, and without offering a particle of proof of undue influence, they boldly

charge that the will was wrenched out of the unwilling of the testator, by the machinations of Dr. Hulbert. I would think that this declaration would have been backed by some proof of what the law calls undue influence, but no scintilla is given. On the other hand, we prove that the line of this will originated with the testator; that Dr. Hulbert was never present at any moment while the will was in progress, and that he never suggested a word about the will to the lawyer who was preparing it. Do they say that the witnesses swore falsely when they state that Carlton excluded everybody from his presence when this business was in hand from first to last. Why is it necessary to attack a man, who for twenty-five years has stood in this city of good repute as a clergyman and a man, in order to prove this will. If their son was a maniac, that would seem enough? Why forfeit for themselves all respect by needlessly attacking one whom they have cherished and confided in?

Sir, Dr. Hulbert stands upon this record without a shadow of impeachment. They have not shown by any act or omission that he was a participant either in the conception or execution of this will. It has been patent all the way through that if there ever was an act done which emanated from the testator himself, and which he insisted upon having done in his own way, and not in the way of anybody else, it was the testator's act of making this will; and yet Dr. Hulbert is charged with procuring this will, because, animated by feelings which reflect credit to him, he promptly responded to a sick man's appeal, leaving his parish and family to take care of themselves, who believed, and had good reason to believe, that if he did not have his care he would perish. A short time before, with comparative health, his household, on a single day, had been reduced to a green Irish lad, and the thing was likely to happen again at any moment, now that he was helpless; and that Dr. Hulbert went and ministered faithfully to the testator, for the rest of his life, and that the testator in his will remembered him, are the sole facts on which they found this case of undue influence. Those are the only facts presented as the inducement to fraud on which your Honor is asked to set aside this will. And it is said this proves restraint—legal restraint; that Carlton was restrained from giving his property to his father.

by the fraudulent influence and control exercised over him by Dr. Hulbert ; that he was restrained from giving to his mother what he believed would be a burthen to her, and what he knew would go to the Nisbets if he gave it to her, and that he was a mere bit of clay in the hand of Dr. Hulbert to mould him at his will. And here let us recall for a moment the only occasion when Dr. Hulbert was in Carlton's presence while the will was under consideration. Carlton called for Dr. Hulbert while the will was being executed, and selecting a particular key from a bunch of keys, directed him to take that key and go to a certain drawer of the bureau which the key would open, where he would find a seal which he desired him to bring to him. Dr. Hulbert followed his directions and brought him the seal. Does an easily managed man keep such personal control of his keys from the person who manages him, or does an incompetent man show such accuracy of memory as he exhibited on this occasion.

And what is the law upon this subject? The rule laid down by Judge JEWETT in the Court of Appeals in the case of *Blanchard vs. Nestle*, has never been disturbed. In that case the testator was an old man, and the will was written by the person in whose favor it was made, but it was in proof that she did it by the direction of the testator ; and Judge JEWETT says :

"I have examined the evidence I think carefully, and am free to say, that, in my opinion, it falls far short of establishing the fact of an improper influence having been exercised over the testator in the making of his will. There is not the slightest proof that I can discover to show any artifice or fraud having been practiced or attempted by any person upon the testator in regard to it. It is true, that the defendant's wife wrote a part of the will, but if there is any reliance upon human testimony, it is equally true, that in that she only obeyed with reluctance the commands, or complied with the urgent request of her father. It is said, that she dictated the will. If by that is meant that she reminded her father of what he had, as she stated, before told her in relation to certain of his property, it is true, but does that amount to the exercise of undue influence? *Influence—persuasion, may be fairly used.* A person has a right by fair argument or per-

suasion to induce another to make a will, and even to make it in his own favor. The procuring a will to be made by such means is nothing against its validity."

The testator was shown to be a very old and feeble man; and the Judge says: "There is not the slightest proof that I can discover to show any artifice or fraud having been practiced." Dr. Hulbert, therefore, had a perfect right, if he chose to do so, to persuade him to make this will, and it would have been a perfectly valid will. But he did not do even that. Not only did he abstain from all interference or persuasion, but he had no idea of Carlton's intentions until the will was executed, and Carlton instructed Mr. Romer not to communicate them to him. But the law requires proof of some act tending to show artifice or fraud on the part of Doctor Hulbert. Is there any such? The mere fact that Doctor Hulbert was in the house with this man of iron-will, at his request, serving him, and doing all that he could to make him comfortable, will avail nothing. Mr. Romer says that everybody was excluded from the room at the time the will was in course of preparation, and that he was told by Dr. Gates not to let Dr. Hulbert know anything about it. Had the testator any object in telling a foolish falsehood on his death-bed, by saying that he did not intend that Dr. Hulbert should know anything about his will, when, in fact, he had been talking it over with him from day to day.

Whatever else may be said of the testator, he was a truthful man—very positive—and much given to the use of big words. He was too self-willed and self-opinionated to think it necessary to use deceit. That was not in his character. And now, sir, there is some evidence in regard to declarations made by Dr. Hulbert subsequent to Carlton's death. Doctor Hulbert is not a fool, and never stated anything in conflict with his character as a clergyman of more than ordinary ability and experience. With the feeling Dr. Lee has manifested it was an easy thing for him, honestly enough, to put his own construction on what Dr. Hulbert did say. I think a gentleman of his respectability and at his age, who will come upon the stand and testify to a series of facts as if within his own knowledge, and as having occurred within the last few months of the testator's life, and then frankly admit

that he never saw the testator during all that time, and that all he had stated was what he had heard from the family, is the last man in the world whose memory is to be relied upon as to the statement of a chance conversation. He has undoubtedly put a wrong construction as to what Dr. Hulbert did say. But the conversation, if true, is of no consequence in this case, except that as a clergyman, Dr. Hulbert could not have meant to be understood as holding it. If he is a bad man, his interest would be against it; if a good man, his sense of duty would be against it.

Upon this question of undue influence, I am not sure but I have consumed more time than I ought to have done. I have felt it a duty to Dr. Hulbert, to present the utter barrenness of the case against him in that regard, for the reason that Dr. Hulbert was not called as a witness. I did not call him because he was a legatee, and I should not have called either of these two witnesses, the Fitzpatrick's, if I had known at the time that they were legatees. Dr. Wood stood in a different position as one of his attending physicians, and no attempt was made to charge him with undue influence.

If any of these legatees had used any corrupt influence known to the law, as such to procure this will, they would have sworn any state of facts necessary to sustain it. I did not choose to follow the example of the contestants in making out my case by the testimony of the parties in interest. In regard to the propriety of calling Dr. Hulbert to the stand, it was a question of more consideration, solely because of his profession, but I have lived long enough to know that a man who has lived as long as Dr. Hulbert, makes for himself a character of good or ill repute in the community in which he lives, and that he can rely for protection upon the former as he must abide by the consequences of the latter. I therefore cheerfully appeal to this standard, and put without fear of results the reputation and standing of Dr. Hulbert in the scale, as against any facts or shadows of fact that have been proved in this case. A man who has stood for twenty-five years in this county as a God-fearing minister of the Gospel, and is esteemed of all men as such, can safely repose upon the rock of such a record as against anything that has been proved here or can be said of him by the counsel who represent the

contestants in this case. It would have been fighting shadows to have put him upon the stand to deny what had not been established. But even if a *prima facie* case, if a great deal stronger case had been made, I should have hesitated before calling Dr. Hulbert, for he had been made the depository of a transaction in the testator's life that, although it could not have helped his case, the counsel would have drawn from him, as he attempted to do in the case of Dr. Arnold. The testator thought it was necessary to communicate it to Dr. Hulbert in order to give effect to the *post mortem* clause in the will. The counsel had already proved for me in his cross-examination, that this suspicion of poison did not refer to any member of his family, so that I had been most gratefully relieved from the necessity of giving proof on that subject, and all the argument based upon the assumption that he thought his family intended to poison him, thereby fell to the ground. That idea, as applied to his own family, he never suggested except when in the delirium of fever. I did not mean to have this story spread upon this record by any agency of mine, and I therefore resisted it. It would not have been confined to this record, but the newspapers were here to carry it to every corner of the land, and the story, if told, would have brought wretchedness and misery to parties entirely innocent of all offence. Neither the exigencies of this case, nor the duty a man who has any semblance of a heart, owes to himself and to others, demanded any such sacrifice.

The key to it is in this case, and the proof was abundant that the testator supposed he had been poisoned; and that he did not attribute the poison to any of his own family. This is distinctly shewn by the evidence of Dr. Upham, Dr. Arnold, and Dr. Wood. In the will, your Honor will remember, Carlton provides that "immediately upon my decease, a careful medical inspection or examination of my remains, and a chemical analysis of the contents of my stomach be made with a view to ascertain whether I shall have been poisoned; and in the event of a discovery of any evidences or indications of such poisoning, I instruct and direct my said executors or such one of them as shall duly qualify, to forthwith take any and all such steps as shall or may be requisite for the institution and prosecution of criminal proceedings

against the person or persons whom I shall have designated as the object or objects of my suspicion in the premises." During his illness, when he had for months been suffering from this burning sensation in his stomach, arising, as the event proved, from a diseased gall bladder and liver, suffering everything it is possible to conceive that an enfeebled body could suffer; having reason to believe that on the first day of March, or the day before, a poisonous substance had been administered to him, as stated in the testimony of Doctor Arnold, on page 218, he dictated this clause. He supposed himself to have been poisoned by a woman, and the circumstances without the names of the parties are detailed upon which he based that opinion. For the purposes of this part of the case Dr. Arnold's testimony on that point was sufficient, and therefore I took the responsibility of not calling Dr. Hulbert. But I took no professional risk. They had shewn that he entertained good grounds for thinking he had been poisoned by some one not in his family; and whether the fact was true or no, was of no importance, so that if he had grounds together with his feelings, which were like those produced by poison, to think so. Doctor Gates was not present at the time of Carlton's last illness. He says that he made this man his particular study in the last two or three weeks he was staying at the house on his last visit, and he is pressed to give the grounds for his opinion that Carlton was insane; for let us not forget that the Doctor does not talk about an insane delusion, but he says that his son was insane. The first evidence he gives is that he spent so much money upon objects of art. Very few of us, I fancy, will agree with the doctor that that was any evidence of insanity. His next point is that Carlton would come down at night when the gas was burning, and if the windows happened to be open he would go to them and close the shutters, and say: "You are offering a premium for assassination." Well, there are thousands of people who are timid and would do the same thing and yet are perfectly sane; but in this case the testator had in his mind all the circumstances of the drama of which he gave Dr. Arnold an outline. He knew he deserved to be shot, and the same influences which would use poison would use the bullet, and he

was made a coward by his conscience. They all speak of his troubled countenance and manner after he returned from Europe. His father sees him walking up and down the piazza and muttering; and with his nervous, excitable temperament he was feeling the full force of the scriptural truth, "that the way of the transgressor is hard."

Then the question was put to Dr. Gates "about his thinking he was poisoned?" and the Doctor said that "he did not think he ever heard him say that anybody had poisoned him."

The Doctor goes on to say, that Carlton coming down in the morning would take his cup of coffee that was standing ready for him, and would throw it into the slop-bowl; and once he accompanied the act with the remark "this is poisoned stuff." This he gives as evidence of insanity in a man who had been living abroad, used to having his meals served not only in a comfortable, but luxurious manner; coming to the table and finding his coffee already poured out and unfit to drink as he thinks, and as much better tempered and less pampered men than he would think. He throws it into a slop-bowl, and some of it very likely went over his mother's dress, sitting at the table.

The point they wish to make is that he would not drink his coffee because he did not see it mixed, and have you infer that he supposed it had been poisoned, and for that reason threw it into the slop-bowl. I say the plain reason was that he wouldn't drink cold coffee when he could get hot. An incident like this is gravely stated here by the contestant, as a ground for his opinion that Carlton was insane. But the doctor had committed himself in his letter to Dr. Hulbert long after that, describing his theory of his son, and if anybody can find one word in it indicating in the slightest degree his opinion of any mental difficulty in his son, they will be more successful than I have been. But this was written before there was any will to break. The letter is on page 512, and I will not detain you at reading it. It was written as late as the 25th of March, 1869, beginning "Very dear sir," and in it he says, directly in contradiction of what he testified in this case.—"Carlton is *not of a scrofulous or consumptive temperament*. His ancestors on both sides are free from that complaint." \* \* \* I have always thought Carlton represented

his case worse than it was for an ulterior object, and may possibly be so now. *I know he is accustomed to very sharp practice.* Might it not be very pleasant to go back to Europe as an invalid for two or three years with a large supply of money, which Mrs. Gates could supply, if she would rent her house, and board in some cheap boarding house, which she would willingly do for the sake of improving his health."

Is there a pretence of insanity here? Does he not describe a sharp, artful man of intellect as well as of want of principle, to invent a plan of ill health, to give him two or three years travel in Europe? Notwithstanding this letter, and all the abuse it contains of Drs. Wood, Clark and Upham, for holding such opinions he was asked this question:

"Q. What were your son's physical *symptoms*?

A. Well, he had *incipient tubercles in his lungs*, derangement of the liver and gall bladder," &c., &c.

In the next place, as a further test of the value of the contestant's judgment in a case, when his interest is at stake, I have put in evidence two deeds. In the first, Dr. Gates having reserved to himself the right to the property in the event that any anticipation was made of the \$3,000 annuity, conveys it to Mrs. Nisbet in trust for Mrs. Gates. Mrs. Nisbet some time after this conveys the property, with the full consent in writing of Dr. Gates to Carlton. Then Dr. Gates goes away and leaves his wife and all the property he had provided for her in the hands of this insane man. Now, if there is any heartlessness to be spoken of in this case, is it not here? Doctor Gates leaving his wife and her property in the hands of a man who was likely to break out at any moment in a fit of madness, and going to a distant State, with the full knowledge of this fact. But, sir, this idea of insanity is all an after thought. When that letter was written in the latter part of March, 1869, there was not the slightest idea that any of Carlton's acts were acts of madness. Tubercles! not a bit of it. It is the story of this "swell doctor" who wants to bring in a bill, and, therefore, makes out a case of tubercles. It is only when his interest comes up to refresh his memory and sharpen his intellect that we hear anything about insanity or tubercles from Dr. Gates.

By the side of this testimony let us now look at Dr. Brown's

evidence for a moment. No man in this country or in any other is more competent to judge. Dr. Gates had said Carlton was insane, and gave his facts. Dr. Lee had said he was insane, and gave no facts, but stated it upon testimony which he had heard. Dr. Brown was asked to take up the whole testimony, read it carefully, weigh it, and determine for himself whether the contestant had made out a case of insanity. He had nothing to do with any other question. The contestants were to succeed only upon an affirmative case of insanity; and Dr. Brown, giving the whole case his careful examination, came to the conclusion, that the testimony did not establish a case of insanity. He was not called upon to examine the question of his sanity. As a physician he had nothing to do with the opinions formed by the witnesses who are the legal judges of his sanity at the time the will is signed. He finds, in other words, that everything that the testator did that was strange or unusual could be explained upon other causes than of insanity.

All that the executors were called upon to do by experts was to show that Dr. Lee was altogether wrong, and that Dr. Gates was affected by his interests, and that the opinions of Dr. Arnold and Dr. Wood were sustained by the most eminent expert in the country. With proof like this, with the testimony of six respectable, intelligent men—all but one entirely free of interest—who alone saw him during that week, and with every opportunity for judging, can the interested opinion of the contestant and the theoretical absurdities of Dr. Lee prevail in destroying a deliberate testamentary act like this? It never has in the history of this class of jurisprudence, and I think the precedent will not now be set.

We come now to that period of time in the history of this case, of which the contestants have given no testimony, but of which the executors have given a full account, that is of the three days when the will was in course of preparation and execution. First Dr. Arnold says, that the testator's mind was during all this time in a perfectly healthy and clear condition. Mr. Romer testifies to the same thing, and three witnesses to the will who had known him very well, state that when he executed it there was nothing in his manner or appearance to excite the slightest suspicion

that he was not all right. One of them heard the will read over section by section, and after that had been done, and Mr. Romer had left the house, Mr. Radford remained and went to the testator's bedside. He knew that Carlton was to live but a few days, and he determined to probe this matter to the bottom. Approaching close to the testator he said: "You have not named your father or mother in the will; is that right," or, "is that consistent?" Thus Mr. Radford brought the very heart and substance of all the issues in this controversy directly before him. The testator did not answer immediately. He paused; but the matter did not pass out of his mind. After a few moments he answered: "The subject you mentioned, I think I fully understand, Mr. Radford." If he had not felt it was what he considered a duty to make such a will, or if he had been induced to make it by the practice of any fraud or artifice upon him, was not this the time and occasion to draw back and relieve himself of all further trouble, by letting the law take its course. So far from this, he had considered all things connected with the matter, and he determined to carry out his plan.

But sir, is it true in any sense, that we show love or hatred to others according as we throw money in their laps. Is the disposition of this miserable property, which has been so much exaggerated, to determine any such question as that. Is money, the only deity fit for men's worship? It may be with some, but thank heaven, the best part of mankind have not reached that fearful depth. Is it a test of love that one gives where the gift is not needed, or a test of hatred, that one does not give where the gift is useless. A will under such circumstances is the last thing to indicate anything like hatred or a delusion of the mind. How many instances have we of persons of wealth giving but the smallest sums to their kindred, and providing largely for strangers to their blood. Mr. Peabody, Mr. Roosevelt, and others whose name is legion, have done these things; but no one ever dreamed that they acted under an insane delusion.

I have prepared a brief of the cases on this subject, but the Surrogate has examined them all so often that I shall not read them. So far as the medical authorities cited by the contestants go, as I have before observed, they have no appli-



At a Surrogate's Court held in and for the  
County of Westchester, at the Surrogate's  
office, in the Town of White Plains, in said  
County, on the 18th day of June, 1870,

Present—JOHN W. MILLS, *Surrogate*.

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IN THE MATTER of proving an in-  
strument purporting to be the  
last Will and Testament of  
CARLTON GATES, late of the  
Town of Yonkers, in said  
County, deceased.

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Satisfactory proof having been made of the due service of the citation heretofore issued in this matter requiring the proper persons to appear in this Court on the 13th day of September, 1869, and attend the probate of an instrument in writing purporting to be the last will and testament of Carlton Gates, late of the Town of Yonkers, in the County of Westchester, deceased; and Victor M. Hulbert, one of the executors named in the said instrument, having appeared by Mr. Samuel E. Lyon and Mr. Ralph E. Prime, his proctors and counsel, in support of the proof of the same; and Amos W. Gates, the father and only heir at law of the said deceased having appeared in person, and by Mr. Reuben W. Van Pelt, Mr. George Norris, and Mr. Thomas Carey, his proctors and counsel, in opposition thereto; and the matter having been duly heard and adjourned from day to day to this day, and the instrument in writing bearing date the 19th day of August, one thousand eight hundred and sixty-nine, purporting to be the last will and testament of the said Carlton Gates, deceased, having been produced, and William Radford, Levi P. Rose, and Thomas J. Farrington, the subscribing witnesses to the said instrument having been duly examined touching the facts and circumstances attending the execution thereof, and the competency of the said Carlton Gates to execute the same as and for his last will and testament; and after hearing the proofs and alle-

gations of the said Amos W. Gates, and due deliberation being thereon had, it is adjudged and decreed, and the Surrogate of the said County of Westchester, by virtue of the power and authority in him vested, doth adjudge and decree that the said Carlton Gates was not of sound mind and memory at the time of the execution of the said instrment in writing purporting to be his last will and testament ; and that the same therefore was not executed and attested in the manner prescribed by law for the execution of last wills and testaments ; and the said Surrogate doth therefore declare that the said instrument in writing is null and void, as and for the last will and testament of the said Carlton Gates, deceased.

And the said Surrogate doth further order that the costs of all the parties to this proceeding and the fees and expenses thereof be paid out of the estate of the said deceased, such fees and expenses to be settled by an order of the Surrogate to be hereafter made in this matter.













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